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Polly E. Trottenberg,
Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2022-0124]

Notice That the Build America, Buy America Requirement for Construction Materials Applies Effective November 10, 2022, and Notice of Proposed Waiver of Buy America Requirements for De Minimis Costs, Small Grants, and Minor Components

ACTION: Notice; request for comments.

SUMMARY: The Department of Transportation (DOT) seeks to maximize the use of American-made products and materials in all federally funded projects as part of the Biden-Harris Administration's implementation of the Build America, Buy America Act (the Act), which was included in the historic Bipartisan Infrastructure Law (BIL). The implementation of this law will transform the Department's approach to domestic procurement requirements. The Department is taking three concurrent actions: (1) DOT is not extending its temporary waiver for construction materials, making that requirement applicable effective November 10, 2022; (2) in a separate notice, DOT is proposing a waiver for narrow categories of contracts and solicitations; and (3) in this notice, DOT is proposing a narrow waiver to allow DOT and its assistance recipients to focus their domestic sourcing efforts on products that provide the greatest manufacturing opportunities for American workers and firms and reduce delays in the delivery of important transportation infrastructure projects that provide jobs and promote economic growth. DOT is seeking comments on whether a waiver of Buy America requirements under the Act and related domestic preference statutes administered by DOT and its Operating Administrations (OAs) should be granted in the public interest for de minimis costs, small grants, and minor components.

DATES: Comments must be received by November 20, 2022.

ADDRESSES: Please submit your comments to the U.S. Government electronic docket site at <http://www.regulations.gov>, Docket: DOT-OST-2022-0124.

Note: All submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT:

For questions about this notice, please contact Darren Timothy, DOT Office of the Assistant Secretary for Transportation Policy, at darren.timothy@dot.gov or at 202-366-4051. For legal questions, please contact Michael A. Smith, DOT Office of the General Counsel, 202-366-2917, or via email at michael.a.smith@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

In January 2021, President Biden issued Executive Order (E.O.) 14005, titled Ensuring the Future is Made in All of America by All of America's Workers. The E.O. states that the United States Government "should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States." DOT is committed to ensuring strong and effective Buy America implementation consistent with E.O. 14005.

On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law (BIL) enacted as the Infrastructure Investment and Jobs Act, Public Law 117-58. The BIL includes the Act, Public Law 117-58, div. G §§ 70901-27, which greatly strengthens Made in America standards by expanding the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. The Act requires that the head of each covered Federal agency shall 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." BIL § 70914(a). However, Federal agencies may waive the application of Buy America in certain circumstances, including where the agency finds that applying the Buy America requirement "would be inconsistent with the public interest." BIL § 70914(b)(1).

The Act required the Office of Management and Budget (OMB) to issue guidance to assist in applying the Act's requirements. BIL § 70915. On April 18, 2022, OMB issued memorandum M-22-11, "Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure" ("Implementation Guidance"). Section VII(b) of the Implementation Guidance, *Waiver Principles and Criteria*, states that "Federal agencies may wish to consider issuing a limited number of general applicability public interest waivers in the interest of efficiency and to ease burdens for recipients." Implementation Guidance at p. 10. The Implementation Guidance goes on to provide examples of certain types of public interest waivers an agency may consider issuing that would support that goal, including infrastructure project purchases below a *de minimis* threshold; purchases made under small Federal grant awards; and miscellaneous minor components within iron and steel products. As the Implementation Guidance notes, such waivers could help "ensure that recipients and Federal agencies make efficient use of limited resources, especially if the cost of processing the individualized waiver(s) would risk exceeding the value of the items waived." Implementation Guidance at p. 11.

The Act also provides that the preferences under Section 70914 apply only to the extent that a domestic content procurement preference as described in Section 70914 does not already apply to iron, steel, manufactured products, and construction materials. BIL § 70917(a)-(b). Federal financial assistance programs administered by DOT's Operating Administrations (OAs) are subject to a variety of mode-specific statutes that apply particular Buy America¹ requirements to iron, steel, and manufactured products, including 49 U.S.C. 50101 (FAA); 23 U.S.C. 313 (FHWA and NHTSA); 49 U.S.C. 22905(a) (FRA); 49 U.S.C. 5323(j) (FTA); and 46 U.S.C. 54101(d)(2) (MARAD). Recent annual appropriations acts have also required DOT to apply the Buy American Act (41 U.S.C. Chapter 83) to funds appropriated under those acts,²

¹ In this notice, references to "Buy America" include domestic preference laws called "Buy American" that apply to DOT financial assistance programs.

² For example, Section 409 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2022 states that "no funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that

where a mode-specific statute is not in place. These statutes also allow for waivers of the Buy America requirements to be issued when doing so is deemed to be in the public interest.

Certain DOT OAs currently do not apply Buy America preferences to *de minimis* purchases or project costs under their existing statutory requirements. For example, the Federal Transit Administration (FTA) exempts purchases of \$150,000 or less by statute. 49 U.S.C. 5323(j)(13). The Federal Highway Administration's (FHWA) minimum threshold for Buy America to apply is \$2,500 (the total amount of iron and steel products as delivered to the project) or 0.1% of the total contract amount, whichever is greater. 23 CFR 635.410(b)(4). However, other DOT OAs, including the Federal Railroad Administration (FRA), the Federal Aviation Administration (FAA), and the Maritime Administration (MARAD) do not have similar exceptions by statute or regulation.

In DOT's experience, the development and substantiation of individual Buy America waivers requires recipients to determine the availability or nonavailability of domestically sourced items. Such efforts can help ensure that potential domestic suppliers are not overlooked and, where waivers may be appropriate, help send signals to industry about market opportunities. However, when the cost of the items is relatively low, suppliers may have a lesser incentive to track and document the country of origin of those items in a manner sufficient to meet the requirements of the Buy America statutes applied to Federal assistance, which can lead to increased administrative burdens even as the potential impact of applying domestic preferences in those cases may be lower. Focusing on higher value items can also allow Federal agencies and their assistance recipients to focus their domestic sourcing efforts on products that provide the greatest manufacturing opportunities for American workers and firms and reduce delays in the delivery of important transportation infrastructure projects that provide jobs and promote economic growth.

Transportation infrastructure projects use a variety of iron and steel items, manufactured goods, and construction materials. Typical iron and steel items subject to Buy America preferences include structural and reinforcing steel incorporated into pavements, bridges,

and buildings (such as maintenance facilities); steel rail; rolling stock (such as buses and trains); and other equipment. Manufactured products may include airfield lighting and navigational aids; ties and ballast; traffic control systems; fare collection and other electronic systems; and mooring bollards, fenders, and gate operating systems. Construction materials include non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall, as well as materials³ that are explicitly exempted from being considered construction materials under the Act.

Proposed Waiver and Request for Comments

DOT is proposing to use its authority under Section 70914(b)(1) to waive the Act's Buy America preferences for iron and steel, manufactured products, and construction materials used in infrastructure projects funded under DOT-administered financial assistance programs for iron, steel, manufactured products, and construction materials under a single financial assistance award for which:

- The total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total allowable costs under the Federal financial assistance award;
- The size of the Federal financial assistance award is below \$500,000; or
- The non-domestically produced miscellaneous minor components comprise no more than 5 percent of the total material cost of an otherwise domestically produced iron or steel product.

The basis for this proposal is that applying Buy America preferences to iron, steel, manufactured products, and construction materials below these thresholds would be inconsistent with the public interest. If issued, the waiver would be applicable to awards that are obligated on or after the effective date of the waiver. The Department requests comment on whether such a waiver would be warranted. DOT also specifically seeks comment on the proposed percentage and dollar thresholds for applying the waiver, including whether those thresholds should be higher or lower than the levels in the proposal.

Because many DOT-administered financial assistance programs are also subject to program-specific domestic preference requirements, the waiver

proposed in this notice would also apply to those requirements. Specifically, the waiver would also be an exercise of DOT's authority to issue public interest waivers under 23 U.S.C. 313(b)(1), 49 U.S.C. 5323(j); 46 U.S.C. 54101(d)(2)(B)(i)(I), 49 U.S.C. 22905(a)(2), 49 U.S.C. 50101(b)(1), and 41 U.S.C. Chapter 83.

In developing this proposal, DOT considered different thresholds for applying the waiver to small grants. While DOT makes federal assistance through discretionary and formula awards at a variety of dollar amounts, the vast majority of its assistance funding is provided in larger sums to transportation infrastructure projects. Reviewing 19,000 awards totaling \$83 billion in FY 2022 that may be covered by DOT's domestic preference requirements, awards for an amount under \$500,000 represented 48% of the 19,000 total, but just 1.4% of the \$83 billion. Awards under \$250,000 accounted for 37% of the 19,000 total and 0.5% of the \$83 billion. Given the scope and scale of DOT's infrastructure assistance programs, the Department believes that it is appropriate to apply the waiver to awards below the higher \$500,000 threshold, as this would significantly reduce administrative burdens while still ensuring that Buy America requirements would be applied to almost all DOT assistance funding. DOT seeks comment on the proposed dollar threshold for applying the waiver to small grants.

DOT believes that waiving the domestic preference requirements for lower-cost items purchased for infrastructure projects under the Act and the DOT-administered Buy America statutes referenced above will support the goals of E.O. 14005 to maximize domestic content in Federal financial assistance awards. Doing so will allow the Department and its assistance recipients to make efficient use of its limited resources to focus their efforts on higher-value products with more significant opportunities to develop a domestic supply base and create well-paid jobs for American workers.

Section 70914(d) of the Act requires that any general applicability waivers issued under section 70914(b) must "be reviewed every 5 years after the date on which the waiver is issued," and prescribes a process for that review that includes an opportunity for public notice and comment and publication in the **Federal Register** of a determination on whether to continue or discontinue the waiver at that time. Accordingly, this proposed general applicability waiver would be subject to such a review within five years of its issue

² in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 8301–8305, popularly known as the "Buy American Act")."

³ See BIL section 701917(c). Exempted materials include cement and cementitious materials, aggregates such as stone, sand, or gravel, and aggregate binding agents or additives.

date. However, DOT would reserve the right to modify or shorten the duration of this waiver if it obtains information before the end of the five-year period indicating the waiver is no longer in the public interest.

The Implementation Guidance also provides that, before granting a waiver in the public interest, to the extent permitted by law, agencies shall assess whether a significant portion of any cost advantage of a foreign-sourced product is “the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products.” Implementation Guidance at p. 12. E.O. 14005 at Section 5 includes a similar requirement for “steel, iron, or manufactured goods.” However, because the public interest waiver that DOT is proposing in this notice is not based on consideration of the cost advantage of any foreign-sourced steel, iron, or manufactured product content, there is not a specific cost advantage for DOT to consider.

DOT will consider all comments received in the initial 15-day comment period during our consideration of the proposed waiver, as required by section 70914(c)(2) of the BIL. Comments received after this period, but before notice of our finding is published in the **Federal Register**, will be considered to the extent practicable. Section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572) also requires an additional 5-day, comment period after FHWA publishes a waiver finding notice. Comments received during that period will be reviewed, but the finding will continue to remain valid. Those comments may influence DOT/FHWA’s decision to terminate or modify a finding.

Issued in Washington, DC on: November 4, 2022.

Polly E. Trottenberg,

Deputy Secretary.

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing the name of one entity that has been placed on

OFAC’s Specially Designated Nationals and Blocked Persons List based on OFAC’s determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this entity are blocked, and U.S. persons are generally prohibited from engaging in transactions with it.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea M. Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC’s website (<https://www.treasury.gov/ofac>).

Notice of OFAC Action

On November 8, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following entity are blocked under the relevant sanctions authorities listed below.

Entity

1. TORNADO CASH; website *tornado.cash*; Digital Currency Address—ETH 0x12D66f87A04A9E220743712cE6d9bB1B5616B8Fc; alt. Digital Currency Address—ETH 0x47CE0C6eD5B0Ce3d3A51fdb1C52DC66a7c3c2936; alt. Digital Currency Address—ETH 0x910Cbd523D972eb0a6f4cAe4618aD62622b39DbF; alt. Digital Currency Address—ETH 0xA160cdAB225685dA1d56aa342Ad8841c3b53f291; alt. Digital Currency Address—ETH 0xD4B88Df4D29F5CedD6857912842cff3b20C8Cfa3; alt. Digital Currency Address—ETH 0xFD8610d20aA15b7B2E3Be39B396a1bC3516c7144; alt. Digital Currency Address—ETH 0x07687e702b410Fa43f4cB4Af7FA097918ffD2730; alt. Digital Currency Address—ETH 0x23773E65ed146A459791799d01336DB287f25334; alt. Digital Currency Address—ETH 0x22aaA7720ddd5388A3c0A3333430953C68f1849b; alt. Digital Currency Address—ETH 0x03893a7c7463AE47D46bc7f091665f1893656003; alt. Digital Currency Address—ETH 0x2717c5e28cf931547B621a5ddd

772Ab6A35B701; alt. Digital Currency Address—ETH 0xD21be7248e0197Ee08E0c20D4a96DEBdaC3D20Af; alt. Digital Currency Address—ETH 0x4736dCf1b7A3d580672CcE6E7c65cd5cc9cFbA9D; alt. Digital Currency Address—ETH 0xDD4c48C0B24039969fC16D1cdF626eaB821d3384; alt. Digital Currency Address—ETH 0xd96f2B1c14Db8458374d9Aca76E26c3D18364307; alt. Digital Currency Address—ETH 0x169AD27A470D064DEDE56a2D3ff727986b15D52B; alt. Digital Currency Address—ETH 0x0836222F2B2B24A3F36f98668E d8F0B38D1a872f; alt. Digital Currency Address—ETH 0x178169B423a011fff22B9e3F3abeA13414dDD0F1; alt. Digital Currency Address—ETH 0x610B717796ad172B316836AC95a2ffad065CeaB4; alt. Digital Currency Address—ETH 0xbB93e510BbCD0B7beb5A853875f9eC60275CF498; alt. Digital Currency Address—ETH 0x84443CFd09A48AF6eF360C6976C5392aC5023a1F; alt. Digital Currency Address—ETH 0xd47438C816c9E7f2E2888E060936a499Af9582b3; alt. Digital Currency Address—ETH 0x330bdFADE01eE9bF63C209Ee33102DD334618e0a; alt. Digital Currency Address—ETH 0x1E34A77868E19A6647b1f2F47B51ed72dEDE95DD; alt. Digital Currency Address—ETH 0xdf231d99Ff8b6c6CBF4E9B9a945CBACeF9339178; alt. Digital Currency Address—ETH 0xaf4c0B70B2Ea9FB7487C7CbB37aDa259579fe040; alt. Digital Currency Address—ETH 0xa5C2254e4253490C54cef0a4347fddb8f75A4998; alt. Digital Currency Address—ETH 0xaf8d1839c3c67cf571aa74B5c12398d4901147B3; alt. Digital Currency Address—ETH 0x6Bf694a291DF3FeC1f7e69701E3ab6c592435Ae7; alt. Digital Currency Address—ETH 0x3aac1cC67c2ec5Db4eA850957b967Ba153aD6279; alt. Digital Currency Address—ETH 0x723B78e67497E85279CB204544566F4dC5d2acA0; alt. Digital Currency Address—ETH 0x0E3A09dDA6B20aFbB34aC7cD4A6881493f3E7bf7; alt. Digital Currency Address—ETH 0x76D85B4C0Fc497EeCc38902397aC608000A06607; alt. Digital Currency Address—ETH 0xCC84179FFD19A1627E79F8648d09e095252Bc418; alt. Digital Currency Address—ETH 0xD5d6f8D9e784d0e26222ad3834500801a68D027D; alt. Digital Currency Address—ETH