

**PRIVILEGED BUSINESS CONFIDENTIAL INFORMATION CONTAINED HERIN ON
PAGES 14-15**

August 22, 2022

The Honorable Ann Phillips, Rear Admiral (U.S. Navy – Retired)
Administrator
United States Maritime Administration

The Honorable Stephanie Pollack
Acting Administrator
Federal Highway Administration

U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, D.C. 20003

Dear Administrators Phillips and Pollack,

On behalf of the American Association of Port Authorities (AAPA), representing 80 public United States' port authorities, I am writing to request a waiver of Buy America domestic preference requirements for grant programs administered by the U.S. Department of Transportation (DOT) or its subagencies, which can be used by seaports to purchase cargo handling equipment.

Pursuant to the Infrastructure Investment and Jobs Act (IIJA) (Pub.L. 117-58 § 70914) the head of a Federal Agency is responsible for making the decision to grant waivers, so I write to you both.

As you know, seaports – and supply chains generally – have been and continue to be a major topic for the Biden Administration, Congress, the media, and the public. As ports look to do their part to ease congestion, they rely on Federal funding to expand their operations, purchase modern equipment, and reduce carbon emissions. These equipment – such as ship-to-shore cranes, gantry cranes, and mobile harbor cranes – are necessary to allow ports to service larger ships, move cargo faster, keep workers safer, and use less fuel.

These vital equipment, however, are not manufactured in the U.S. and without a waiver, ports are unable to spend grant dollars on them. Under IIJA, a waiver may be granted on the basis of nonavailability, meaning that these products are not manufactured in the U.S. in sufficient supply. After extensive research and consultation with our ports, we submit that the nonavailability provision applies to these equipment and that a waiver should be granted.

Following this letter, you will find a detailed analysis of the current situation at ports, the availability – or lack thereof – of relevant equipment, and the need for an industry-wide Buy America waiver. Following this analysis, the only conclusion is that a waiver is justified and



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should be granted so that U.S. ports can make the best use of expanded Federal funds to modernize and remain globally competitive.

Thank you in advance for your thorough review. Please do not hesitate to reach out to me or AAPA's policy team with any questions.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Chris Connor', with a stylized flourish at the end.

Christopher J. Connor
President & CEO

Cc: The Honorable Pete Buttigieg, Secretary, U.S. Department of Transportation
The Honorable Shalanda D. Young, Director, Office of Management and Budget
The Honorable Maria Cantwell, Chair, Senate Committee on Commerce, Science, and Transportation
The Honorable Roger Wicker, Ranking Member, Senate Committee on Commerce, Science, and Transportation
The Honorable Peter DeFazio, Chairman, House Committee on Transportation and Infrastructure
The Honorable Sam Graves, Ranking Member, House Committee on Transportation and Infrastructure
General Stephen Lyons (U.S. Army – Ret.), Port and Supply Chain Envoy
Ms. Elizabeth Reynolds, Special Assistant to the President for Manufacturing and Economic Development

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Waiver Request and Explanation

**The Law and Realities are Clear that
U.S. Supply Chain Modernization Depends on Equipment Upgrades,
Coupled with a Pathway to Reshoring**

America's seaports request a waiver of Buy America¹ domestic preference requirements for manufactured products purchased as part of DOT grant awards for the period encompassing Fiscal Years 2023 and 2024. We request that this waiver apply retroactively to all existing grants made to seaports by the below programs or their predecessors. The industry believes this is the approximate minimum time period required to reshore domestic production of port equipment, which is currently a priority for the industry and its Association.

The applicable grant programs are:

- Port Infrastructure Development Program (PIDP)
- Rebuilding American Infrastructure with Sustainability and Equity (RAISE)
- Infrastructure for Rebuilding America (INFRA)
- America's Marine Highways Program (Marine Highways)

This request will address the permissibility and necessity of an industry-wide waiver for highly specialized and urgently-needed equipment using these programs.

Specifically, AAPA requests a waiver for the following types of equipment:

- Overhead/hammerhead cranes
- Ship-to-shore cranes
- Straddle carriers
- Drayage trucks
- Overhead traveling cranes
- Rubber tire gantry cranes
- Cantilevered rail-mounted gantry cranes
- Rail-mounted gantry cranes
- Automatic stacking cranes
- Mobile harbor cranes
- Hydraulic boat lifts
- Bulk Material Ship Loaders/Unloaders

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

- Passenger Bridges
- Gangway systems

These types of port equipment are not manufactured domestically. This is the basis for our waiver request. For context and a complete picture, we are also including information about the potential price differential if produced in limited quantities in the U.S. We include further information about the ways in which the inability to purchase these types of equipment from foreign sources will limit the success of Federal grant programs, as well as policy goals of the Biden Administration.

As you will also read, the industry is not solely asking for a waiver – in parallel, we are working in partnership with the United States Maritime Administration (MARAD), to incentivize domestic manufacture of the above equipment.

Introduction

AAPA is the unified voice for seaports in the U.S., representing 80 public port authorities around the country. AAPA's member ports are the gatekeepers of the American economy and trading system. America's seaports deliver vital goods to consumers, facilitate the export of American made goods, create jobs, and support local and national economic growth. According to Martin Associates, the total economic value generated in terms of revenue to the business, personal income, and economic output generated by ports accounts for 26 percent of GDP. Our ports directly employ over 650,000 Americans.²

As import and export cargo volumes continue to rise, America's ports are eager to make improvements that will allow them to increase capacity, efficiency, and fluidity. With an eye toward sustainability and resiliency, ports are also investing in next generation technologies, such as electrified port equipment.

As was laid bare during the recent pandemic-related supply chain crisis, ports must increase capacity and efficiency in order to remain competitive in a global market and to ensure timely delivery of important goods to American consumers. The equipment contained in this waiver request is an absolute necessity for increased capacity and efficiency.

The equipment discussed herein comprise the backbone of any modern port. Ship-to-shore cranes and mobile harbor cranes load and offload cargo from vessels; gantry cranes shuffle containers around as they are moved in and out of on-dock storage areas; overhead cranes and top pickers move cargo onto and from trucks and rail cars to connect to our domestic network. These equipment are essential.

² 2018 National Economic Impact of the U.S. Coastal Port System
https://aapa.cms-plus.com/files/Martin%20study_executive%20summary%202018%20US%20coastal%20port%20impacts%20final.docx

Below is a sample of the types of equipment discussed in this request. Many of these items are recognizable as staples of the maritime supply chain, even to those whose only experience with a port is driving past one.



Figure 1: Mobile Harbor Crane the Port of Savannah (Source: Georgia Ports Authority)



Figure 2: Ship-to-Shore Cranes at the Port of LA (Source: Crane Market)



Figure 3: Straddle Carrier (Source: Konecranes USA)

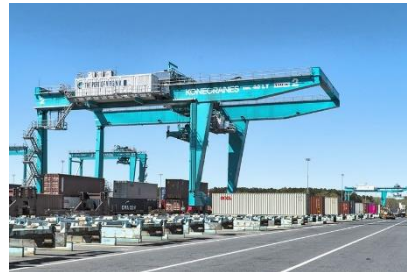


Figure 4: Rail Mounted Gantry Cranes at the Port of Virginia (Source: Cision News)

As AAPA's members – public port authorities – make strategic plans for the next five to ten years, they consider what equipment they will need to purchase. AAPA conducted an initial survey of our members to gauge the scope of these anticipated purchases. With fewer than half of members responding, we found that ports planned to purchase 53 ship-to-shore cranes, 95 gantry cranes, 23 mobile harbor cranes, and 53 other cranes over the next 5 years.³ This survey was conducted before the recent infrastructure legislation was finalized and prior to the serious consideration of an industry-wide waiver request, thus the actual/current projected numbers are likely much higher.

³ AAPA Port Equipment Survey, Conducted July 2021
<https://aapa.cms-plus.com/files/2021CraneOrderSummaryJul.xlsx>

Ports Rely on DOT Grant Programs to Make Improvements, But Those Grant Programs Cannot be Fully Used

In order to make necessary upgrades and expansions, ports must employ a range of DOT grant programs.

PIDP is the primary Federal resource ports can use to make these investments. PIDP is a relatively new program, having first been funded in Fiscal Year 2019. It is the only landside infrastructure grant program reserved exclusively for port authorities. In the ensuing years, PIDP has funded nearly \$750 million in grant awards, though applications in that same period were nearly \$3.5 billion.⁴

Ports are also eligible for grants under other DOT programs like RAISE, INFRA, and Marine Highways, though ports must compete against other modes of transportation for funding.

In 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA) – commonly referred to as the Bipartisan Infrastructure Law (BIL).⁵ BIL will provide historic infrastructure funding over the five-year life of the law. Each of AAPA’s members’ core Federal grant programs will receive significant boosts including \$450 million per year for PIDP, \$1.5 billion per year for RAISE, and \$5 million per year for Marine Highways – all above annual baseline appropriations. Additionally, INFRA will receive \$1.6 billion per year in total appropriations over the life of BIL.

This financial boost represents an historic – and badly needed - investment in port infrastructure, and ports immediately began planning the best uses for that money.

BIL also establishes the Build America, Buy America Act (BABA). BABA is the latest iteration of longstanding government policy limiting the spending of grant dollars to products manufactured in the U.S. Both the Biden and Trump Administrations took steps to strengthen these requirements.

BABA also continues the century-old statutory waiver process for items that simply cannot be sourced domestically. This was a smart policy when it was first enacted by Congress, and it continues to make even more sense today in a crisis.

BABA, like its predecessors, delineates several categories of goods for the purposes of domestic preference requirements. The categories are iron and steel, construction materials, and manufactured products. This request is focused finished equipment, which is a manufactured product.

⁴ MARAD PIDP Data

⁵ Public Law 117-58-November 17, 2021

As we will go into more detail below, large, modern cargo handling equipment is not currently produced in the U.S. and as such, ports are unable to use DOT grant dollars to purchase this vital equipment, which blunts the impact of these programs.

Buy America Waivers are Permitted Under BIL in Order to Maximize Its Impact

Congress has found that “the United States must make significant investments to install, upgrade, or replace the public works infrastructure⁶ of the United States and with respects to investments in the infrastructure of the United States, taxpayers expect that their public works infrastructure will be produced in the United States⁷ by American workers.” § 70911. “Common construction materials used in public works infrastructure projects⁸, including *manufactured products* . . . are not adequately covered by a domestic content procurement preference, thus limiting the impact of taxpayer purchases to enhance supply chains in the United States.” *Id.* (emphasis added).

By May 14, 2022, agencies were to ensure that all applicable programs complied with § 70914 of the Act. The Office of Management and Budget (OMB) Memorandum “M-22-11” re-emphasized the Buy America preferences to include “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 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.” Office of Mgmt. Budget, Exec. Office of the President, OMB Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure (2022) quoting IIA § 70912(6)(B)(ii).

⁶ The term “infrastructure” includes at a minimum, “the structures, facilities, and equipment for, in the United States—(A) roads, highways, and bridges; (B) public transportation; (C) *dams, ports, harbors, and other maritime facilities*; (D) intercity passenger and freight railroads, (E) *freight and intermodal facilities*; (F) airports; (G) Water systems, including drinking water and wastewater systems; (H) electrical transmission facilities and systems; (I) utilities; (J) broadband infrastructure; and, (K) buildings and real property.” Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 70912(5), 135 Stat. 1294 (2021) (emphasis added).

⁷ The term “produced in the United States” is defined 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.” § 70912(6) (emphasis added).

⁸ The term “project” means the construction, alteration, maintenance, or repair of infrastructure in the United States. § 70912(7).

The law clearly and wisely allows for waivers. The head of a Federal agency⁹ who applies a domestic content procurement preference¹⁰ under § 70914 may waive the application of that preference in any case in which the head of the Federal agency finds that (1) applying the domestic content procurement preference is inconsistent with the public interest; (2) type 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; or, (3) the inclusion of iron, *manufactured products*, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. § 70914(b) (emphasis added).¹¹

In addition to the preceding sections, BABA establishes a Technical Assistance Partnership between the Secretary of Transportation, as amended (Secretary), and the Secretary of Commerce, acting through the Director of the National Institute for Standards and Technology, “to ensure the development of a domestic supply base to support intermodal transportation in the United States, such as...infrastructure projects under the jurisdiction of the Secretary and ensure compliance with Buy America laws that apply to a project that receives assistance from...another office or modal administration of the Secretary of Transportation.” § 70916. “Before granting a written waiver under a Buy America law, the Secretary shall consult with the Director of the Hollings Manufacturing Extension Partnership regarding whether there is a domestic entity that could provide the iron, steel, *manufactured product*, or construction material that is the subject of the proposed waiver. § 70916(b) (emphasis added).” Section 70916 applies to a Federal financial assistance¹² program for infrastructure only to the extent that a domestic content procurement preference as described in § 70914 does not already apply to iron, steel, *manufactured products*, and construction materials. *Id.* (emphasis added).

⁹ The term “Federal agency” is defined as “any authority of the United States that is an “agency” (as defined in section 3502 of title 44, United States Code), other than an independent regulatory agency (as defined in that section).” *Id.*

¹⁰ The term “domestic content procurement preference” is defined as “a requirement that no amounts made available through a program for Federal financial assistance may be obligated for a project unless—(A) all iron and steel used in the project are produced in the United States; (B) the manufactured products used in the project are produced in the United States; or (C) the construction materials used in the project are produced in the United States.” *Id.*

¹¹ In conducting a review of a general applicability waiver, the head of a Federal agency shall (A) publish in the Federal Register a notice that (i) describes the justification for a general applicability waiver; and, (ii) requests public comments for a period of not less than 30 days on the continued need for a general applicability waiver; and, (B) publish in the Federal Register a determination on whether to continue or discontinue the general applicability waiver, taking into account the comments received in response to the notice published under subparagraph (A). § 70914(d)(2).

¹² “(A) IN GENERAL—The term “Federal financial assistance” has the meaning given the term in section 200.1 of title 2, Code of Federal Regulations (or successor regulations). (B) INCLUSION—The term “Federal financial assistance” includes all expenditures by a Federal agency to a non-Federal entity for an infrastructure project, except that it does not include expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.” § 70912.

As discussed below, AAPA has already laid groundwork with the Hollings Manufacturing Extension Partnership on this topic.

In other words, you, as heads of the relevant Federal agencies, may waive Buy America requirements if a request falls into any of three categories: unreasonable cost, nonavailability, or public interest.¹³

A waiver qualifies for the *unreasonable cost* category if the price of a domestically produced item will increase the overall project cost by 25 percent or more. The *nonavailability* exemption allows for waivers if the item is not produced at all in the U.S., or not produced in sufficient quantities. DOT may grant a waiver for *public interest* under a range of circumstances, including expeditious achievement of policy goals, to allow industries time to adjust to new rules and to bolster sustainability and equity.¹⁴

Further, though not directly applicable for port projects, it is worth noting that the Federal Transit Administration's (FTA) Buy America statutes require that FTA *must* prove that relevant equipment is manufactured domestically, otherwise it *must* grant a nonavailability waiver request.¹⁵¹⁶ In our current context, the government has acknowledged at various times what industry asserts below, namely that the most modern cargo moving equipment are not currently made in the U.S.

As mentioned at the outset, the port industry is requesting a waiver based on the nonavailability allowance. For ease of process, AAPA has drafted a proposed Federal Register notice for the nonavailability finding (See "Exhibit A"). In addition, the public interest allowance further justifies a waiver and is a viable alternative basis itself. Lastly, we provide information about the price allowance – even though there is no actual domestic alternative – for context.

Vital Port Equipment is Not Produced Domestically

In previous generations, "large ship-to-shore cranes" were produced in the U.S., though they were very different from modern container cranes. They were primarily used to move bulk goods. However, along with the decline in manufacturing experienced in other sectors, large crane production moved to countries with less expensive labor and inputs. Also, given the immense cost of transporting these cranes from the site of assembly to the end user, it became cheaper for West Coast ports to source their cranes from Asia and for East and Gulf Coast ports to source theirs from Europe. Today, all ship-to-shore cranes come from Asian and European companies. Some European cranes are assembled in Asia and transported on company-owned ships, which cuts down on transportation costs.

¹³ OMB Memo: Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022

¹⁴ *Id.*

¹⁵ 49 U.S.C. 5323(j)(2)(B)

¹⁶ 87 FR 43101

AAPA has conducted extensive research to attempt to identify a domestic manufacturer, but we have been unable to locate one producing these product lines. We have facilitated ongoing discussions with industry, including hosting a webinar – in partnership with MARAD – on Buy America/Buy American with the intention of connecting ports with U.S. manufacturers who produce similar equipment.¹⁷

This issue is a priority for the Association. AAPA dedicated staff time to conduct a thorough search for this equipment, but were unable to find them in the U.S. AAPA has had many formal and informal conversations with manufacturers of similar products but have been told explicitly that they had no plans to expand into this market. Anecdotal conversations with our members on this topic have been unanimous in the port’s inability to locate a domestic supplier. In support of this argument, we have included affidavits from some of our port members who are “on the ground” in this process. They each attest to the fact that these equipment cannot be sourced domestically (See “Exhibit B”)

Additionally, DOT has previously acknowledged the fact of nonavailability and has granted waivers to the Port Newark Container Terminal – part of the Port Authority of New York and New Jersey – and the Georgia Ports Authority for ship-to-shore cranes¹⁸ and gantry cranes¹⁹, respectively. In both cases, the ports conducted thorough searches for domestic manufacturers. They also published requests for proposals to build these cranes but only received responses from foreign manufacturers. The information gathered by the ports during these processes were submitted to the Federal Highway Administration (FHWA) as part of their waiver request. In both cases, FHWA agreed that no manufacturer existed in the U.S. and waivers were granted.^{20,21}

Thus, on information and belief, we can conclude that none of the cranes and other equipment included in this waiver request are made in the U.S. The fact that there is a government record that these equipment are not available is our single best fact.

There is another important layer to the type of equipment is that available – or really, unavailable – currently in the U.S. Electrified equipment is a rapidly expanding technology but is dominated by foreign production. Some small-scale electrified equipment is assembled in the U.S., but the number of foreign inputs exceed the percentage allowable under current Buy

¹⁷ AAPA, MARAD to Present Live Webinar On Federal Grant Requirements. AAPA Press Release Published November 19, 2020 <https://www.aapa-ports.org/advocating/PRDetail.aspx?ItemNumber=22689>

¹⁸ Buy America Waiver Notification for the Federal Highway Administration, 81 Fed. Reg. 87125 (Dec. 2, 2016). See “Exhibit B”.

¹⁹ Buy America Waiver Notification for the Federal Highway Administration, 82 Fed. Reg. 55153 (Nov. 20, 2017) See “Exhibit C”.

²⁰ “FHWA concludes that there are no domestic manufacturers for these 33 components of RMG cranes for use by the Georgia Ports Authority.” 81 Fed. Reg. 87125 (Dec. 2, 2016)

²¹ . “Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers of Ship-to-Shore Container Gantry Cranes to accommodate Ultra Large Container Vessels at the Port of Newark Container Terminal.” 82 Fed. Reg. 55153

America certification requirements.²² In the immediate, this important green and sustainable way of doing business can only happen with equipment that simply is not made in the U.S.

Based on these facts alone, MARAD should grant a waiver due to nonavailability of domestic supply.

Granting Buy America Waivers Will Help to Realize Policy Goals

The inability of ports to use these funds for vital equipment purchases runs counter to the stated goals of DOT grant programs.

While reauthorizing PIDP, Congress delineated several goals for the program, including, “improving the safety, efficiency, or reliability of the loading and unloading of goods, the movement of goods, operational improvements (including projects to improve port resilience), *or environmental and emissions mitigation measures.*”²³

The Fiscal Year 2022 Notice of Funding Opportunity (NOFO) for RAISE states that DOT, “is looking to award projects that align with the President’s greenhouse gas reduction goals, promote energy efficiency, support fiscally responsible land use and transportation efficient design, increase use of lower-carbon travel modes such as transit and active transportation, incorporate electrification or zero emission vehicle infrastructure, increase climate resilience...”²⁴

Among other things, INFRA is to be used for, “...shifting freight transportation to other modes, thereby reducing congestion and bottlenecks...”²⁵

Without newer, larger, more efficient, and greener equipment, the maritime industry cannot achieve the Biden Administration’s goals.

Implementation guidance for BIL states that, “waiver[s] in the public interest may be appropriate where an agency determines that other important policy goals cannot be achieved consistent with the Buy America requirements established by the Act.”²⁶ The stated goals of the Biden Administration and BIL are to modernize infrastructure, expand cargo capacity, reduce supply chain backlogs, promote resiliency through carbon emissions reduction, create new jobs, and to generally stimulate the economy.

²² It's heartening, for example, that boundary-pushing U.S.-made hydrogen-powered equipment are being explored by some ports; but this is at the exceedingly small-scale test phase.

²³ Public Law 117-58-November 17, 2021 135 STAT. 1442 (emphasis added)

²⁴ FY 22 RAISE Notice of Funding Opportunity, Amended March 22, 2022

²⁵ FY 22 Multimodal Project Discretionary Grant Notice of Funding Opportunity, Amended May 18, 2022

²⁶ OMB Memo: Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022

Indeed, DOT has already issued a blanket waiver for construction materials funded through grant and formula programs, “[i]n order to deliver projects and meaningful results while ensuring robust adoption of Buy America standards.”²⁷ AAPA submitted comments supportive of the decision and urging DOT to consider expanding the waiver to manufactured products.²⁸

Our Association supports the BIL’s policy goals but the speed and totality with which they can be achieved is hampered by procurement restrictions. In order to maximize the positive effects of DOT grant programs, we believe a public interest waiver is also justified. Infrastructure modernization addresses three priorities of the Biden Administration: reducing supply chain backlogs - and inflation -; mitigating the environmental impacts of the transport sector; and creating American jobs.

As American consumers and business struggle with record freight costs, it is vital that our ports get the resources they need to expand operations and move freight more efficiently.²⁹ Congestion at seaports and other nodes of multimodal transportation like inland rail yards is causing shipping prices to increase, *inter alia*. Delays in shipping also have downstream effects, as manufacturers and service-based businesses struggle to serve their customers while they are waiting for products, materials, and inputs to arrive. These effects are ultimately borne by all consumers as additional costs to sellers are added into the price of end products sold to consumers.

The Biden Administration has made it clear that they believe supply chain issues have contributed to inflation and that addressing those challenges can help to lower prices. While announcing the appointment of retired General Stephen Lyons to the role of Ports Envoy, President Biden remarked, “[Lyons] helped us identify and get ahead of the challenges arise at our ports, our railroads, and on the road. This is about reducing costs for families.”³⁰

Similarly, the speed at which these projects are completed is a major factor in determining the level of impact the project will have on the economy. A few months ago, the White House announced permit streamlining for infrastructure projects saying, “Long overdue improvements to our nation’s ports, airports, rail, and roads will help ease inflationary pressures,

²⁷ Temporary Waiver of Buy America Requirements for Construction Materials, 87 FR 31931, pp. 31931-31936

²⁸ AAPA Comments to Proposed Buy America Waiver for Construction Materials, Submitted May 15, 2022 <https://aapa.cms-plus.com/files/AAPA%20DOT%20RFI%20for%20Temporary%20Public%20Interest%20Waiver%20for%20Buy%20America-AAPA19-LPT02.pdf>

²⁹ In a growing number of cases, the mere movement of freight in and around ports and coastal gateways is not enough; shifts in logistics practices and in consumption habits mean cargo and equipment storage and staging is an added expectation on a port industry that was usually just built for movement and velocity. Storage tends to mean a greater number of freight moves and calls for more equipment and more versatile equipment.

³⁰ Remarks by President Biden on Inflation and Actions Taken to Lower Prices and Address Supply Chain Challenges, June 10, 2022

create conditions for businesses to thrive, and strengthen supply chains – which will ultimately lower costs for families.”³¹

Buy America restrictions drive up infrastructure project costs and slow down project timelines.

The rush of imports caused by pandemic-induced consumer spending has illustrated the need for increased investment in American ports. Overall, demand is likely to continue increasing. These higher cargo volumes we’re now experiencing are the new *floor*

To move increased cargo volumes, ports will need to expand their operations with new berths, deeper harbors, more cargo-handling equipment, and a larger workforce, among other things. The BIL represents a historic down payment on a new era of investment in transportation infrastructure, and PIDP is the best tool the Federal Government has to spur investment in new projects to move cargo more efficiently and cost-effectively. The efficacy of this program, however, is blunted by the limited range of port equipment available in the United States. It is certainly in the public interest to have efficient ports that are capable of moving record cargo volumes to consumers and businesses, and a lack of flexibility strains ports’ ability to take advantage of Federal grants to purchase materials and equipment that will expand their operations.

Addressing climate change and the health of environmental justice communities has been a priority for the Biden Administration. Ports sit in a unique position to address these concerns, as they are situated to mitigate greenhouse gas emissions from all modes of transportation and particulate emissions affecting near-port communities.

Ports sit at the intersection of maritime, truck, and rail transportation. They also sit in a vulnerable position on coastlines, as rising sea levels threaten to overwhelm critical infrastructure. Other extreme weather events like heat waves can also threaten port operations, as electric grid brownouts and blackouts can deprive ports of essential energy security.

PIDP grants are now eligible for a slew of projects to mitigate negative environmental impacts, including the electrification of cargo handling equipment, the installation of shore power, harbor craft retrofitting, etc. Unfortunately, much of the equipment necessary to complete these types of projects are not available from United States manufacturers. AAPA recently conducted a survey of our member port authorities on their environmental efforts and found that 80 percent of port authorities have difficulty sourcing equipment and materials from domestic manufacturers for environmental improvement projects.

³¹ FACT SHEET: Biden-Harris Administration Releases Permitting Action Plan to Accelerate and Deliver Infrastructure Projects On Time, On Task, and On Budget, May 11, 2022

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Environmental justice communities would also benefit from a waiver to Buy America rules for port equipment. The Biden Administration has declared through the Justice40 initiative that 40 percent of the benefits from infrastructure projects should benefit environmental justice communities.³² For this goal to be achieved at ports, waivers are necessary. Retrofitting harbor craft, providing shore power to docked vessels, and replacing diesel-powered cargo handling equipment with zero and near-zero emission equipment will all have benefits to near-port communities by reducing harmful emissions from these sources.

Finally, a Buy America waiver would allow ports to expand their operations faster and with greater ease. In addition to helping to mitigate cargo congestion, expanded operations and new, larger equipment means more jobs at ports. While the equipment purchased under this proposed waiver would be manufactured abroad, the operators would be American workers. Jobs like crane operators are unionized, highly specialized, highly paid jobs, which would add to the nearly 90,000 union longshoremen already working at U.S. ports. Upgraded, modern equipment would also reduce accidents and keep new and existing workers safer as they process cargo.

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The Cost of Limited Domestic Manufacture Would Exceed Established Price Differential

As described above, there is no manufacturer currently producing the above listed large port equipment in the U.S. AAPA and our members have, however, had discussions with U.S. manufacturers to explore the potential costs of producing a small number of cranes as a one-time order. Given the lack of economies of scale, standing up a highly specialized production line for a limited run would be prohibitively expensive. One company estimated that the cost of a mobile harbor crane built under these circumstances would be 35 percent higher than buying from an established manufacturer.³³ So, were a domestic company to consider briefly expanding their product line, it would very likely drive up the project cost in excess of the 25 percent threshold currently in law.

Though our port members have largely not pursued limited domestic manufacturing of these equipment on their own, a small number have had initial conversations with foreign companies who have some U.S. operations. One port reported that temporarily moving production of mobile harbor cranes from an overseas facility to a domestic facility for a small order would have increased the per unit cost by \$2 million, compared to the same mobile harbor crane produced overseas, which would not be sustainable.

³² The White House: The Path to Justice40 <https://www.whitehouse.gov/omb/briefing-room/2021/07/20/the-path-to-achieving-justice40/>

³³ Buy America Waiver Notification for the Federal Highway Administration, 85 Fed. Reg. 38013

Another port conducted an initial survey to determine the cost of building 6-10 ship-to-shore cranes at their port facility. They determined that the cost of each crane constructed at their port would be more than double the cost of a comparable crane constructed overseas and delivered to their port. Six ship-to-shore cranes purchased overseas would have cost \$68 million, while the same number of cranes built on-site was estimated to cost in excess of \$159 million. This would undoubtedly drive the overall project cost up by more than 25 percent.

The above justification supports granting a waiver on its own. However, you need not reach a firm conclusion about price due to the current lack of availability.

END OF PRIVILEGED BUSINESS CONFIDENTIAL INFORMATION

AAPA is Partnering with the Federal Government to Reshore Equipment Manufacture

Our industry fully supports the objectives of Buy America, a robust domestic manufacturing base, and all the jobs and economic activity associated with manufacturing. Further – though not currently available – U.S. ports would prefer to purchase domestically manufactured equipment. To that end, AAPA is working with government and stakeholder groups, including the Hollings Manufacturing Extension Partnership (MEP), to incentivize domestic manufacture of large port equipment. The MEP is a subagency of the Department of Commerce whose mission is to stimulate American manufacturing by connecting potential purchasers of good with appropriate partners in the manufacturing space.

AAPA has met with MEP staff and partners, and they have expressed interest in working with our members, but they needed better data than our initial, limited survey.

To address that, in partnership with – and with funding from – MARAD, AAPA will conduct a thorough survey of our members' equipment needs over the next several years. Once tabulated, the results of the survey will give us a comprehensive picture of planned equipment purchases.

Working with MARAD, we will also explore the possibility of pooled procurement, whereby the port industry as a whole would approach a manufacturer(s) with an industry-wide purchase order, ideally making the business case required to make standing up a production line feasible. As we have conversations with manufacturers and government agencies, AAPA has developed an outline of our reshoring efforts and an explanation of our next steps in the process. (See "Exhibit E") Standing up manufacture of these equipment in America would also mean bringing a significant number of manufacturing jobs back to the U.S.

This process will likely take several years, however, and ports need to make these purchases now or risk exacerbating supply chain backups or losing their competitive edge.

Conclusion: Ports are Eligible for and in Need of Buy America Waivers

It is undisputed that ports need updated infrastructure. The billions of dollars appropriated for ports through BIL evidence the demand for such investment. However, such funds are bottlenecked by the Buy America domestic preference requirements imposed upon federal grants. **AAPA requests a temporary, industry-wide waiver for Fiscal Years 2023 and 2024 for manufactured goods**, including existing grants and new grants awarded in that time period, on grounds that these items are not domestically available. Though AAPA believes in goals of Buy America laws, such a waiver would allow the industry time to resolve the supply chain crisis, and to stimulate domestic manufacture, while adjusting to the new requirements of the Build America, Buy America Act.

Exhibit A

Proposed Draft Buy America Waiver Federal Register Notice

AGENCY:

Maritime Administration (MARAD), Federal Highway Administration (FHWA), DOT.

ACTION:

Notice.

SUMMARY:

This notice provides information regarding MARAD – in consultation with FHWA – finding that a Buy America waiver is appropriate for manufactured products, namely large cargo handling equipment, at U.S. seaports. These products are not manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

DATES:

The effective date of the waiver is October 1, 2022 to September 30, 2024.

FOR FURTHER INFORMATION CONTACT:

XXXX

SUPPLEMENTARY INFORMATION:

Electronic Access

XXXX

Background

The Build America, Buy America Act (Pub.L. 117-58) establishes new domestic sourcing requirements for iron, steel, manufactured products, and construction materials. The law also provides for a waiver of the Buy America requirements when satisfactory quality domestic manufactured products are not sufficiently available (non-availability). This notice provides information regarding MARAD's finding that a Buy America waiver is appropriate for the following large, manufactured cargo moving equipment due to nonavailability:

- Overhead/hammerhead cranes
- Ship-to-shore cranes
- Straddle carriers
- Drayage trucks
- Overhead traveling cranes
- Rubber tire gantry cranes
- Cantilevered rail-mounted gantry cranes
- Rail-mounted gantry cranes
- Automatic stacking cranes
- Mobile harbor cranes
- Hydraulic boat lifts
- Bulk Material Ship Loaders/Unloaders

- Passenger Bridges
- Gangway systems

The American Association of Port Authorities, a trade association representing 80 American seaports, has conducted extensive research of domestic manufacturers and has concluded that manufacturing of the above equipment does not exist in the U.S. These findings are consistent with past MARAD and FHWA findings which resulted in previous Buy America Waivers.

Accordingly, the MARAD and FHWA waive the Buy America requirements for these equipment as part of existing and future grant awards administered by DOT or its subagencies starting on October 1, 2022, and ending on September 31, 2024. This limited waiver does not include equipment not listed in this notice.

This waiver applies to grants made under the following grant programs or their predecessors: Port Infrastructure Development Program (PIDP), Rebuilding American Infrastructure with Sustainability and Equity (RAISE), Infrastructure for Rebuilding America (INFRA), and America's Marine Highways Program (Marine Highways).

Exhibit B

GENERAL AFFIDAVIT

I, Bethann Rooney, being duly sworn, hereby deposes and says:

1. To my actual knowledge without due inquiry, all of the facts stated in this affidavit are true and correct.
2. I am over 18 years of age. I reside at 12 Cairngorm Road, New City, New York 10956. I am fully competent to make this affidavit.
3. I am the Port Director of The Port Authority of New York and New Jersey (Port Authority). The Port Authority is a member of the American Association of Port Authorities (AAPA).
4. This affidavit is submitted in support of AAPA's Temporary Buy America Waiver Request for Port Equipment
5. The Port Authority has solicited general interest for port equipment that would meet the Federal Highway Administration Buy America requirements. This solicitation did not provide any evidence suggesting that there is sufficient and reasonably available quantity of a satisfactory quality of any port equipment listed below...
 - a. Overhead/Hammerhead Cranes
 - b. Ship-To-Shore Cranes
 - c. Straddle Carriers
 - d. Overhead Traveling Cranes
 - e. Rubber Tire Gantry Cranes
 - f. Cantilevered Rail-Mounted Gantry Cranes
 - g. Automatic Stacking Cranes
 - h. Mobile Harbor Cranes
 - i. Hydraulic Boat Lifts
 - j. Bulk Material Ship Loaders/Unloaders
 - k. Passenger Bridges
 - l. Gangway systems
 - m. Drayage trucks
 - n. Rubber Fenders

I signed this affidavit on August 11, 2022 at New City, New York.

A handwritten signature in black ink, appearing to read "Bethann Rooney", is written over a horizontal line.

Bethann Rooney

GENERAL AFFIDAVIT

I, [Sharon Rothwell], being duly sworn, hereby deposes and says:

1. To my knowledge, all of the facts stated in this affidavit are true and correct.
2. I am over 18 years of age. I reside in [Washington State]. I am fully competent to make this affidavit and I have personal knowledge of the facts stated in this affidavit.
3. I am the [Director of Contracts & Purchasing] of the [Port of Tacoma and the Northwest Seaport Alliance]. The [Port of Tacoma and the Northwest Seaport Alliance] is a member of the American Association of Port Authorities (AAPA).
4. This affidavit is submitted in support of AAPA's Temporary Buy American Waiver Request for Port Equipment
5. [Port of Tacoma and the Northwest Seaport Alliance] has informally explored the market and/or attempted to procure one or more of the manufactured goods listed in Exhibit "A" from a U.S. manufacturer.
6. [Port of Tacoma and the Northwest Seaport Alliance] has been unable to find a U.S. manufacturer that sources such manufactured goods.
7. Annexed hereto as Exhibit "A" is a true and correct copy of the manufactured goods from a U.S. manufacturer [Port of Tacoma and the Northwest Seaport Alliance] is unable to obtain, dated [7/29/2022].
8. I signed this affidavit on [8/1/2022] at [Tacoma, WA].



Sharon Rothwell (Aug 1, 2022 13:57 PDT)
[Sharon Rothwell]



EXHIBIT "A"

List of manufactured goods Port/Company is unable to obtain from U.S. manufacturers, dated [7/29/2022]:

- (a) Ship-To-Shore Cranes
- (b) Straddle Carriers
- (c) Shuttle Trucks
- (d) Overhead Traveling Cranes

GENERAL AFFIDAVIT

I, Patrick Blair, being duly sworn, hereby deposes and says:

1. To my knowledge, all of the facts stated in this affidavit are true and correct.
2. I am over 18 years of age. I reside at 1206 Callista Ave. Valrico, FL. 33596. I am fully competent to make this affidavit and I have personal knowledge of the facts stated in this affidavit.
3. I am the Vice President of Engineering of Port Tampa Bay. Port Tampa Bay is a member of the American Association of Port Authorities (AAPA).
4. This affidavit is submitted in support of AAPA's Temporary Buy American Waiver Request for Port Equipment
5. Port Tampa Bay has informally or formally explored the market and/or attempted to procure one or more of the manufactured goods listed in Exhibit "A" from a U.S. manufacturer.
6. Port Tampa Bay has been unable to find a U.S. manufacturer that sources such manufactured goods.
7. Annexed hereto as Exhibit "A" is a true and correct copy of the manufactured goods from a U.S. manufacturer Port Tampa Bay is unable to obtain, dated July 28, 2022.
8. I signed this affidavit on July 28, 2022 at Tampa, Florida.



Patrick Blair, P.E.

EXHIBIT “A”

List of manufactured goods Port/Company is unable to obtain from U.S. manufacturers, dated July 28, 2022:

- (a) Overhead/Hammerhead Cranes
- (b) Ship-To-Shore Cranes
- (c) Straddle Carriers
- (d) Shuttle Trucks
- (e) Overhead Traveling Cranes
- (f) Rubber Tire Gantry Cranes
- (g) Cantilevered Rail-Mounted Gantry Cranes
- (h) Automatic Stacking Cranes
- (i) Mobile Harbor Cranes
- (j) Hydraulic Boat Lifts
- (k) Bulk Material Ship Loaders/Unloaders
- (l) Passenger Bridges
- (m) Gangway systems



PORT OF REDWOOD CITY

Serving Silicon Valley

Port Commissioners
RICHARD S. CLAIRE
RALPH A. GARCIA
LORIANNA KASTROP
STAN MAUPIN
NANCY C. RADLCIFFE

GENERAL AFFIDAVIT

I, Kristine A. Zortman, being duly sworn, hereby deposes and says:

1. To my knowledge, all of the facts stated in this affidavit are true and correct.
2. I am over 18 years of age. I reside in Belmont, California. I am fully competent to make this affidavit and I have personal knowledge of the facts stated in this affidavit.
3. I am the Executive Director of the Port of Redwood City. The Port of Redwood City is a member of the American Association of Port Authorities (AAPA).
4. This affidavit is submitted in support of AAPA's Temporary Buy American Waiver Request for Port Equipment
5. The Port of Redwood City has informally or formally explored the market and/or attempted to procure one or more of the manufactured goods listed in Exhibit "A" from a U.S. manufacturer.
6. The Port of Redwood City has been unable to find a U.S. manufacturer that sources such manufactured goods.
7. Annexed hereto as Exhibit "A" is a true and correct copy of the manufactured goods from a U.S. manufacturer the Port of Redwood City is unable to obtain, dated August 1, 2022
8. I signed this affidavit on August 1, 2022 at Redwood City, California

Kristine A. Zortman

EXHIBIT "A"

List of manufactured goods Port/Company is unable to obtain from U.S. manufacturers, dated August 1, 2022:

- (a) Bulk Material Ship Loaders/Unloaders
- (b) Passenger Bridges
- (c) Gangway systems

Exhibit C

FHWA's finding that a Buy America waiver is appropriate for use of non-domestic galvanized strands consisting of HDPE or HDPP sheath filled corrosion inhibitor meeting FDOT specification 938, ASTM and PTI requirements for SR-836/I-395 from West of I-95 to MacArthur Causeway Bridge in the State of Florida.

In accordance with the Consolidated Appropriations Act, 2016 (Pub. L. 114-113) and the Continuing Appropriations Act, 2017 (Pub. L. 114-223), FHWA published a notice of intent to issue a waiver on its Web site: <http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=136> on September 28th. The FHWA received no comments in response to the publication. Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers of galvanized strands consisting of HDPE or HDPP sheath filled corrosion inhibitor meeting FDOT specification 938, ASTM and PTI requirements for SR-836/I-395 from West of I-95 to MacArthur Causeway Bridge in the State of Florida.

In accordance with the provisions of section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110-161, 23 CFR 635.410.

Issued on: November 23, 2016.

Gregory G. Nadeau,
Administrator, Federal Highway Administration.

[FR Doc. 2016-28970 Filed 12-1-16; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for procurement of two non-domestic Ship-to-Shore Container Gantry Cranes to accommodate Ultra Large Container Vessels at the Port of

Newark Container Terminal in the State of New Jersey.

DATES: The effective date of the waiver is December 5, 2016.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366-1562, or via email at Gerald.Yakowenko@dot.gov. For legal questions, please contact Mr. William Winne, FHWA Office of the Chief Counsel, (202) 366-1397, or via email at William.Winne@dot.gov. Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register's** home page at: <http://www.archives.gov> and the Government Publishing Office's database at: <https://www.gpo.gov/fdsys/>.

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for use of non-domestic Ship-to-Shore Container Gantry Cranes to accommodate Ultra Large Container Vessels at the Port of Newark Container Terminal in the State of New Jersey.

In accordance with the Consolidated Appropriations Act, 2016 (Pub. L. 114-113) and the Continuing Appropriations Act, 2017 (Pub. L. 114-223), FHWA published a notice of intent to issue a waiver on its Web site: <http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=134> on September 20th. The FHWA received three comments in response to the publication. The commenters provided general comments on Buy America with no specific information regarding domestic sources for Ship-to-Shore Container Gantry Cranes. Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers of Ship-to-Shore Container Gantry Cranes to

accommodate Ultra Large Container Vessels at the Port of Newark Container Terminal.

The New Jersey State DOT, contractors, and subcontractors involved in the procurement of ship-to-shore container gantry cranes, are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

In accordance with the provisions of section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110-161, 23 CFR 635.410.

Issued on: November 23, 2016.

Gregory G. Nadeau,
Administrator, Federal Highway Administration.

[FR Doc. 2016-28973 Filed 12-1-16; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT-MARAD 2016-0120]

Request for Comments of a Previously Approved Information Collection

AGENCY: Maritime Administration (MARAD), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on August 12, 2016 (81 FR 53540).

DATES: Comments must be submitted on or before January 3, 2017.

FOR FURTHER INFORMATION CONTACT: Devede Midgette, 202-366-2354, Office of Sealift Support, Maritime Administration, Department of Transportation, 1200 New Jersey Avenue SE., W26-494, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Exhibit D

3. *Wildlife*: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 306108 *et seq.*].

5. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996].

6. *Water*: Clean Water Act [33 U.S.C. 1251–1387].

7. *Executive Orders*: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: November 14, 2017.

Karla S. Petty,
Division Administrator.

[FR Doc. 2017–25069 Filed 11–17–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for 33 iron and steel components of Georgia Ports Authority-procured Rail Mounted Gantry (RMG) cranes that will increase intermodal capacity at the Garden City Terminal in Garden City, Georgia. These iron and steel components are not manufactured (from melting to coating) in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

DATES: The effective date of the waiver is November 21, 2017.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at Gerald.Yakowenko@dot.gov. For legal questions, please contact Mr. Jomar Maldonado, FHWA Office of the Chief Counsel, 202–366–1373, or via email at Jomar.Maldonado@dot.gov. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register's** home page at: <http://www.archives.gov> and the Government Publishing Office's database at: <http://www.access.gpo.gov/nara>.

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when satisfactory quality domestic steel and iron products are not sufficiently available (non-availability). This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for twenty-eight iron and steel components of eight RMG cranes that will be procured by the Georgia Ports Authority to increase intermodal capacity at the Garden City Terminal in Garden City, Georgia due to non-availability.

In accordance with the Consolidated Appropriations Act of 2017 (Pub. L. 115–31), FHWA published a notice seeking comments on whether a waiver is appropriate on its Web site, <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=150> on May 9. The FHWA received no comments in response to the publication.

The Georgia Ports Authority commissioned an independent study demonstrating that RMG cranes could not be produced domestically. These findings are consistent with past studies demonstrating that no RMG cranes using 100 percent domestic steel and iron are reasonably available. Based on vendor responses to the port's procurement solicitation, some crane components could be manufactured in the U.S. However, the following 33

items are not manufactured in the U.S. in manner that the iron and steel complies with FHWA's Buy America requirements: gantry motor, gantry motor brake, gantry gearbox couplings, gantry gearbox, gantry wheel, gantry guide and thrust roller assembly, gantry rail brake hydraulic pump, gantry rail brake hydraulic solenoid, gantry oleo bumper, trolley motor, trolley motor brake, trolley motor gearbox coupling, trolley motor gearbox, trolley wheel, trolley guide thrust roller assembly, trolley oleo bumper, hoist motor, hoist motor gearbox coupling, hoist gearbox, hoist gearbox hoist drum coupling, hoist brake thruster, hoist sheave, hoist headblock sheave, slew motor, slew motor brake, slew motor gearbox coupling, slew gearbox, gantry cable rear motor, gantry cable reel gearbox, gantry cable reel brake assembly, gantry cable reel slip ring assembly, load cell pin, and main power transformer. Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers for these 33 components of RMG cranes for use by the Georgia Ports Authority. Accordingly, the FHWA waives the Buy America requirements for these 33 components. This limited waiver does not include steel and iron components of the RMG cranes that are available with steel and iron produced domestically, including the steel gantry structure.

This project will be completed under a Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies, Significant Freight, and Highway Projects FY 2016 grant award (commonly referred to as FASTLANE grants).

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410

Issued on: November 13, 2017.

Brandye L. Hendrickson,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2017–25074 Filed 11–17–17; 8:45 am]

BILLING CODE 4910–22–P

Exhibit E

Port Equipment Reshoring Initiative

The American Association of Port Authorities (AAPA) is looking for potential preferred suppliers of heavy port equipment in the U.S. The information below describes the current legislative and business landscape, as well as our efforts to incentivize domestic production of these equipment.

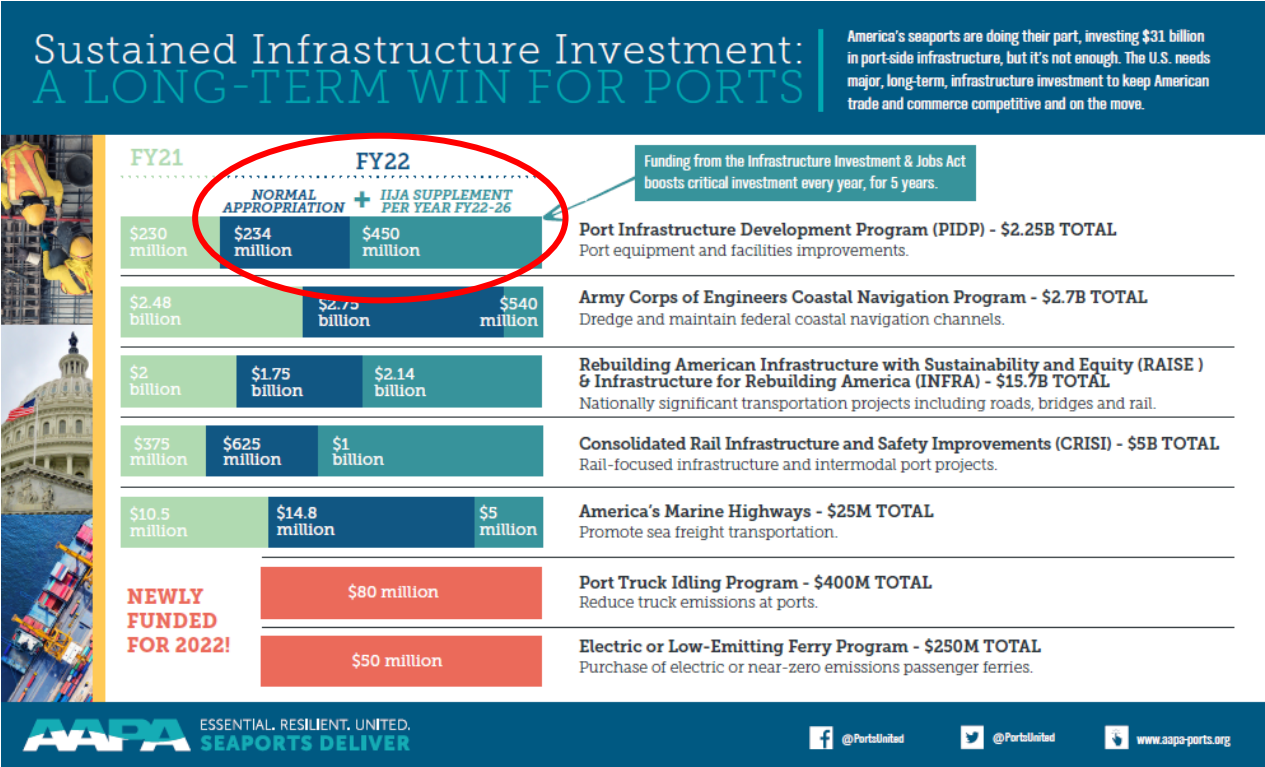
Every day, U.S. ports rely on large, highly specialized equipment to move cargo onto and off of ships and around the port complex. They connect cargo with our domestic transportation network by loading and unloading trucks and rail cars. These equipment are the backbone of the port.

As ports look to modernize, expand, and increase fluidity, large equipment like cranes are an integral part of those plans.

One of the primary ways that ports make infrastructure improvements is through grant funding. At the Federal level, the Port Infrastructure Development Program (PIDP) is the only grant program reserved exclusively for port authorities. Ports also apply for other U.S. Department of Transportation (DOT) programs where they compete with other modes of transportation.

Under the Infrastructure Investment and Jobs Act – commonly referred to as the Bipartisan Infrastructure Law (BIL) – which was enacted in late 2021, these grant programs are receiving historic infusions of funding. Ports are eager to avail themselves of these funds to make infrastructure investments. PIDP, in particular, will receive \$2.5 billion in funding over the next five years, on top of annual baseline funding.

The graphic below shows some of the increases in grant funding provided under BIL.



aapa-ports.org
@seaportsdeliverprosperity
@PortsUnited



As always, government funds come with strings attached. Also included in BIL is the Build America Buy America Act (BABA). BABA is the latest iteration of longstanding government policy which limits the spending of grant dollars to products manufactured in the U.S. Both the Biden and Trump Administrations took steps to strengthen these requirements.

Large port equipment like cranes are not currently made in the U.S. As such, ports are unable to use grant dollars to procure these equipment.

AAPA represents 80 public port authorities around the country. At some point in the next five to ten years, many – if not all – of our members will be seeking to purchase large port equipment. At the request of our industry, AAPA is exploring the possibility of incentivizing domestic manufacture of these equipment.

AAPA conducted an initial survey of our members to gauge the scope of these anticipated purchases. With less than half of members responding, we found that ports planned to purchase 53 ship-to-shore cranes, 95 gantry cranes, 23 mobile harbor cranes, and 53 other cranes over the next 5 years. This survey was conducted before the recent infrastructure legislation was finalized; thus, the actual/current projected numbers are likely much higher.

To paint a more complete picture, AAPA is partnering with the Maritime Administration to conduct a thorough survey of our entire membership to determine the equipment they intend to buy in the next several years

We will also explore the possibility of ‘pooled procurement’ whereby the industry’s equipment needs are aggregated into a single order, with the intent that such an order would provide the incentive needed for a domestic manufacturer to stand up production. AAPA is also committed to working with any potential manufacturer and advocating that the Federal Government provide favorable market conditions to further incentivize expansion into this vertical, including using a preferred supplier model whereby the first company to enter this market would receive preferential treatment.

An American company producing these equipment would also receive a *de facto* protection from being undercut by foreign manufacturers because ports would only be able to spend grant money to purchase from that American company, and ports would strongly prefer to use grant funds for these purchases.

The Biden Administration and Congress are very supportive of bringing this type of manufacturing home, with some in Congress looking to ban all Chinese-made cranes.

Bottom Line: Ports are slated to receive billions of dollars in Federal funds over the next five years. Our industry would like to spend that money on much needed port equipment, and they would much rather spend that money domestically. There is currently an untapped market for American made heavy port equipment.

