



COLORADO
Department of Transportation
Division of Transportation Development

Multimodal Planning Branch
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Denver, CO 80222-3400

TO: Statewide Transportation Advisory Committee

FROM: Debra Perkins-Smith, Director of CDOT Division of Transportation Development
Michael King, Alternative Fuels Planner

DATE: April 20th, 2018

RE: Buy America Waiver Delays

Purpose

This memo is intended to update the members of the STAC on recent developments in the ongoing delay of Buy America waiver approvals by FHWA.

Action

Informational.

Background

The Buy America Act (1982) requires that federal tax dollars used to purchase steel, iron, and manufactured products permanently incorporated into a federal aid highway project be produced domestically in the United States. The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) under USDOT have variances in their Buy America policies that allow agencies pursuing a project that is unable to meet the steel/iron content requirements of Buy America to request a waiver from the federal government and, if granted, proceed using products of non-US origin.

Historically the FHWA has required project managers using Congestion Mitigation Air Quality (CMAQ) funds for the purchase of vehicles to apply for a waiver before proceeding with their projects. In the past, FHWA has worked with CDOT to gather waivers on a quarterly basis from project managers purchasing vehicles with CMAQ funds. This process was operating normally until late CY 2016, when FHWA stopped approving the submitted waivers. For more than a year, no waivers were approved for vehicle purchases nationwide, with the unexplained exception of four projects located in California. However, effective April 17th, FHWA published a notification in the [Federal Register](#) of their intent to issue waivers for 151 state projects representing 955 vehicle purchases nationwide. These waiver requests were all submitted between April and December of CY 2016.

In Colorado, five projects representing 23 total vehicles would be covered by the waiver. They are:

- Weld County
 - 5 LNG/CNG conversion kits for heavy-duty trucks
 - 3 1/2 ton CNG trucks



- 4 3/4 ton CNG trucks
- 1 3/4 ton CNG truck (for Gilcrest)
- 2 3/4 ton CNG trucks (for Ft. Lupton)
- 1 class-7/8 CNG truck (for Ft. Lupton)

- North Front Range MPO
 - 1 1/2 ton CNG truck

- CDOT Region 3
 - 4 passenger commuter vans (for Pitkin County)

- CDOT Region 5
 - 1 vacuum street sweeper (for Pagosa Springs)

- Regional Air Quality Council (RAQC)
 - 1 diesel-powered street sweeper (for Wheat Ridge)

Following a 15-day public comment period the waiver is expected to be finalized and the above projects will be able to proceed. This assumes that the approval follows the usual timeframe, which as illustrated above has not been the case through the rest of the Buy America waiver process in recent months.

While this is a positive development, there are still a number of pending projects in Colorado that are in need of Buy America waivers submitted in CY 2017 and therefore not included in the above notification. At present there is no indication of whether or not these waivers will eventually be approved, but FHWA has communicated their intention to review and reassess the Buy America waiver process in accordance with Executive Order 13788 “Buy American & Hire American” issued by the President on April 18th, 2017. This may result in delays in decisions on whether to grant Buy America waivers in the future.

The pending CY 2017 waivers referenced above include those needed for the completion of the RAQC’s Alt Fuels Colorado Program and the ongoing success of the North Front Range MPO and Weld County CMAQ programs. Without additional waivers these projects will remain in limbo, with more than \$2.7 million in RAQC CMAQ funds and more than \$5.7 million in North Front Range MPO CMAQ funds that cannot be spent. In concrete terms, the lack of available Buy America waivers will prevent the purchase of hundreds of alternatively fueled vehicles and other important equipment whose absence will impede Colorado’s efforts to attain critical air quality benefits and achieve key state priorities such as the Governor’s Executive Order D 2017-105: Supporting Colorado’s Clean Energy Transition. In some cases vehicle leases may be an available alternative since they do not required Buy America waivers, however this solution may not be universally applicable.

Next Steps

CDOT staff will monitor the situation to see whether additional waivers for pending projects submitted in CY 2017 are forthcoming. In the meantime, and until there is greater clarity regarding the long-term viability of the Buy America waiver system, CDOT is working to keep its MPO and agency partners informed on the issues and challenges they may face with future CMAQ-funded projects requiring Buy America waivers. CDOT welcomes ongoing input and collaboration from MPOs and partner agencies seeking a resolution to their own projects in order to determine the best approach moving forward.



Resolution # TC-18-09-17

Acknowledging factors to be used to reduce the projects listed in Proposition # 109 if it is successful in November, 2018.

Approved by the Transportation Commission on September 20, 2018.

WHEREAS, the Colorado Department of Transportation (“CDOT”) is an executive department of the State of Colorado (“State”); and

WHEREAS, pursuant to §43-1-106(8)(a) and (j), C.R.S., the Colorado Transportation Commission (“Commission”) is charged with formulating general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state and to do all other things necessary and appropriate in the construction, improvement, and maintenance of the state highway and transportation systems; and

WHEREAS, Initiative #167 was filed and placed on the ballot as Proposition #109, and if approved by the people of Colorado would require CDOT to bond for up to \$3.5 billion by July, 2019 and dedicate those funds to the specific highway projects listed in the proposition; and

WHEREAS, Proposition #109 provides a list of projects that are likely to cost in excess of \$5.6 billion; and

WHEREAS, Proposition #109 only identifies up to \$3.5 billion available to fund those projects; and

WHEREAS, if Proposition #109 is passed, provisions of SB 18-1 replace \$1.5 billion of existing state funding (SB 17-267), resulting in a \$2 billion net increase in funding for state highways; and

WHEREAS, Proposition #109 does not provide a share of proceeds to local governments to address their local transportation priorities; and

WHEREAS, Proposition #109 prohibits proceeds from being expended on local roads, transit or bicycle/pedestrian needs; and

WHEREAS, no new funding scenario is able to cover all transportation needs in the state and Colorado’s highway system has project needs that exceed \$10 billion in addition to deficits to appropriately maintain the state’s existing highway system of over \$200 million annually; and

NOW, THEREFORE, BE IT RESOLVED, should Proposition #109 be passed by the people of Colorado, the Commission commits to consider the following factors when reducing the overall project scope of the Proposition #109 list:

- Statewide equity
- The need to expend 80% of the bonded funds within three years of issuance
- Other funding available

Herman F. Stock III
Herman Stockinger, Secretary
Transportation Commission of Colorado

9-20-18
Date

Resolution # TC-18-09-18

Expressing support for Proposition 110 to increase transportation funding across Colorado if approved by voters in November, 2018.

Approved by the Transportation Commission on September 20, 2018.

WHEREAS, pursuant to §43-1-106(8)(a) and (j), C.R.S., the Colorado Transportation Commission (“Commission”) is charged with formulating general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state and to do all other things necessary and appropriate in the construction, improvement, and maintenance of the state highway and transportation systems; and

WHEREAS, pursuant to §43-1-106(8)(h), C.R.S., the Commission promulgates and adopts the budgets of the Colorado Department of Transportation (CDOT); and

WHEREAS, pursuant to §43-1-106(8)(i), C.R.S., the Transportation Commission provides services and information to the boards of county commissioners; and

WHEREAS, Colorado faces significant transportation funding challenges now and in the future as a result of the declining purchasing power of a flat gas tax, rising construction costs, and increasing demands on existing transportation infrastructure; and

WHEREAS, future expansion projects are limited by rising maintenance costs and preservation needs; and

WHEREAS, Proposition #110 has been placed on the ballot and if approved by the people of Colorado would increase the state sales tax by .62% for twenty years and dedicate those funds to local roads, highways, and multimodal options across the state; and

WHEREAS, Proposition #110 includes a net projected increase in state transportation revenue of approximately \$18 billion; and

WHEREAS, the Commission, with the collaboration of the Statewide Transportation Advisory Committee, has approved a list of projects across the state as well as several statewide programs, including Fiber and Technology; ADA Sidewalks and Bicycle/Pedestrian; Safety Shoulders, Rest Area Restoration, Small Freight and Truck Parking, and Wildlife Crash Mitigation; and a Pavement Improvement Program, all of which could be funded if Proposition #110 is approved by voters; and

WHEREAS, Proposition #110 also includes funding for local transportation needs for every county, city and town across the state, as well as funding for multimodal needs, including transit, rail, and bicycle and pedestrian projects; and

WHEREAS, CDOT has prepared a “Factual Summary of 2018 Transportation Ballot Propositions” of the propositions which will appear on the November 6, 2018 general election ballot for approval or disapproval by the voting citizens of the state;

WHEREAS, the Department, with the participation of transportation planning partners from around the state, including the Statewide Transportation Advisory Committee has created a Development Program of projects that account for the highest priority highway projects across the state that are unfunded or underfunded, and the Department is developing a similar program for transit priorities; and

WHEREAS, the Commission recognizes no new funding scenario is able to cover all transportation needs in the state but Proposition #110 takes a substantial step toward filling Colorado’s most pressing transportation needs; and

NOW, THEREFORE, BE IT RESOLVED, the Commission supports the passage of Proposition #110 which will strongly support the economic vitality of Colorado and the quality of life of the public by greatly improving how we safely move people, goods and information on Colorado's transportation system; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that copies of this Resolution, the Factual Summary of Proposition 110, the list of projects related to this proposition and other relevant information be disseminated to the county commissioners of the state as well as others using customary means; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Transportation Commission recommends to the boards of county commissioners, as consultant to the said boards, that the passage of Proposition 110 will best meet the costs of current and future transportation needs which far exceed available transportation revenues.

By Herman F. Stockinger III
Herman Stockinger, Secretary
Transportation Commission of Colorado

9-20-18
Date of Approval