



U.S. Department
of Transportation
**Federal Highway
Administration**

Ohio Division
January 30, 2019

200 North High Street, Room 328
Columbus, OH 43215
614-280-6896
614-280-6876

In Reply Refer To:
HDA-OH

Jack Marchbanks
Director
Ohio Department of Transportation
1980 West Broad Street
Columbus, OH 43223

Dear Director Marchbanks:

This letter is in response to your November 1, 2018 letter of interest to participate in the Federal Highway Administration's (FHWA's) Special Experimental Project (SEP-16) through a delegation of responsibility for Buy America Waivers. We have completed our review of your proposal and concluded that delegation of responsibilities relating to Buy America Waivers are not appropriate under the SEP-16 program. Key reasons for this decision include:

1. The proposed delegation does not appear to be consistent with the overall purpose and intent of 23 U.S.C. 313 and 23 CFR 645.410. Waiver determinations involve findings that are based on national and international conditions, not State-specific conditions. Since these determinations involve consideration of national and international conditions, these decisions are most appropriately made at the Federal level.
2. The impacts of a Buy America Waiver decision often are not confined to the State requesting the Waiver. A grant of a Buy America Waiver generally has national and international implications regardless whether it is a national, regional, or project-specific Waiver.
3. Executive Order 13788 (Presidential Executive Order on Buy American and Hire American), section 4(b), which provides that "[t]o the extent permitted by law, determination of public interest waivers shall be made by the head of the agency with the authority over the Federal financial assistance award or Federal procurement under consideration." We believe the proposed SEP-16 delegation would be inconsistent with the intent of that provision, which is that agency heads not delegate the Buy America Waiver decision. In addition, SEP-16 permits experiments only with Title 23 provisions.

We appreciate your interest in SEP-16, and we look forward to working with you and your staff on other concepts that may be appropriate for SEP-16 experimentation. If you have any questions, please contact David Snyder at david.snyder@dot.gov, or 614-280-6852.

Sincerely,


Laura S. Leffler
Division Administrator

DA Reading File

By messenger (ODOT)

Ecc: Lloyd Macadam, ODOT
Sonja Simpson, ODOT
Jennifer Townley, ODOT
Tim Hill, ODOT
Dave Slatzer, ODOT
Brad Jones, ODOT
Tom Corey, ODOT
Rob Griffith, FHWA
Laurie Leffler, FHWA
Jessica Patterson, FHWA
Rachel LeVee, FHWA

File Location: L:\Electronic Subject and Project Files\20 Stewardship and Oversight\20-N
Special Experimental Projects\Special Experimental Project 16 (SEP-16)