



The National Beat

August 24, 2023

Federal Updates

On August 9th, President Joe Biden released a statement on the Wildfires in Maui, Hawaii ([read here](#)). President Biden visited Hawaii on August 21st amid calls for greater accountability relating to potential mistakes that may have contributed to the unprecedented fatalities in Lahaina. Concurrently, the idea of establishing a National Disaster Safety Board, akin to the NTSB, has gained traction. The wildfires could serve as a catalyst for its creation, building on previous attempts in Congress that saw a version of the bill pass the House but not the Senate (i.e., "The Disaster Learning and Life Saving Act," [read here](#)). With federal emergency response funding running low and the need for disaster relief evident, proponents in Congress argue that a Disaster Safety Board could effectively address and learn from natural disasters, much like how the NTSB has influenced safety improvements in the transportation sector. President Biden has appointed former union leader Brendan Danaher as a top labor adviser at the White House, filling the role left by Celeste Drake ([read here](#)). Danaher, who previously advised the Biden transition on transportation issues and served as a labor policy adviser at the Department of Transportation, will take on the position of deputy director of the National Economic Council for labor and economy. He will work on the ongoing negotiations between United Auto Workers and Detroit automakers.

The Biden administration's Inflation Reduction Act (IRA) initially raised fears of a trade war over electric vehicles (EVs) due to its consumer tax credit favoring North American-built EVs ([read here](#)). However, U.S. imports of EVs have surged by 57% in the first half of 2023, with 154,822 battery-powered vehicles imported, largely due to a separate IRA tax credit for leased EVs known as 45W. This provision has allowed foreign manufacturers to compete on a similar level to North American-made vehicles. Despite the increase, neither the EU nor foreign-brand manufacturers are declaring victory, as concerns remain over the consumer tax credit provision. The Treasury Department's inclusion of leased vehicles in the commercial provision of IRA has been a significant development, opening the government subsidy to a wide range of customers. Some lawmakers argue that the administration has distorted Congress' intent, while others believe the commercial tax credit has eased tensions without solving all problems.

USDOT

On August 22nd, NHTSA issued a Notice of Proposed Rulemaking (NPRM) to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, requiring a seat belt warning system for rear seats in certain vehicles and enhancing front seat belt warning requirements ([read here](#)). The proposed rule, in line with MAP-21, applies to passenger cars, trucks, most buses, and multipurpose passenger vehicles weighing 10,000 pounds or less, with staggered effective dates for front and rear seat belt warnings. NHTSA is accepting comments on the rule for 60 days.

On August 21st, FHWA announced it will provide Hawaii with \$3 million in "quick release" Emergency Relief (ER) funds to address traffic management services and repair infrastructure damaged by wildfires in Lahaina on the island of Maui ([read here](#)). The funding will support the replacement of traffic signals, erosion control, guardrails, signage, and traffic management services by the police. The ER program



helps restore essential transportation infrastructure damaged by natural disasters, and these funds are an initial installment to aid in recovery efforts.

On August 21st, FTA issued a notice requesting comments related to the New Freedom Program (49 U.S.C. 5317) ([read here](#)). This program, repealed in 2012 but with remaining funds still available for original purposes, aimed to reduce barriers to transportation services and expand mobility options for people with disabilities beyond the requirements of the Americans with Disabilities Act (ADA). Comments must be submitted by September 20, 2023, by state or local governments, private non-profit organizations, and public transportation authorities. The information collected will be used by the FTA to monitor grantees' progress in implementing and completing project activities.

On August 21st, FTA issued a notice requesting comments related to the Urbanized Area Formula Funding program (49 U.S.C. 5307), which provides federal resources for transit capital, operating assistance, and transportation-related planning in urbanized areas ([read here](#)). Comments must be submitted by September 20, 2023, by state or local governmental entities operating public transportation services. The program's funding is available to designated recipients, including public bodies and governors, for urbanized areas with populations of 50,000 or more. Eligible activities include planning, engineering, capital investments in bus and fixed guideway systems, and certain expenses associated with mobility management programs.

On August 18th, FHWA announced that the Culvert AOP Program ([read here](#)) awarded \$195.87 million in funding for FY 2022. The grants are distributed to 59 tribal, state, and local governments to support 169 projects across 10 states: Alaska, California, Idaho, Maine, Massachusetts, New Hampshire, North Carolina, Oregon, Virginia, and Washington. Several MPOs have received awards ([read here](#)). The state with the highest funding is Alaska, receiving \$44,087,431 for 45 projects, followed by Washington with \$58,218,424 for 46 projects. The distribution of grants is as follows:

On August 18th, FHWA announced it granted \$8.8 million across 10 projects in various states to promote the adoption of innovative tools for improved safety in work zones and bridges through the Accelerated Innovation Deployment (AID) Demonstration program ([read here](#)). The AID program incentivizes the integration of cutting-edge transportation technologies, ultimately enhancing the adaptability, equity, and safety of the U.S. transportation system. The recently awarded grants encompass projects involving smart work zones, the use of Ultra-High-Performance Concrete, and the integration of intelligent compaction and geospatial data for enhanced road network management.

On August 17th, USDOT announced it has appointed 24 members to the Advisory Committee on Transportation Equity (ACTE), which will advise Secretary Buttigieg on issues related to civil rights and expanding access to jobs and economic opportunities in transportation for all communities ([read here](#)). The committee consists of experts from MPOs, academia, the private sector, and the transportation industry, with expertise in community engagement, equity, transportation planning, policy, and advocacy. The ACTE's objectives include providing advice on institutionalizing equity, strengthening partnerships with underserved communities, coordinating equity concerns in transportation decisions, and enhancing management's decision-making process.

On August 16th, USDOT announced an update to the Build America, Buy America Act (BABA) guidance ([read here](#)). BABA was signed into law as part of the Bipartisan Infrastructure Law (BIL) on November 15, 2021. The Act establishes a preference for domestic content in infrastructure projects funded by Federal



financial assistance. USDOT finalized an exception to the Buy America rules for small costs and grants. This exception is not as broad as first suggested by DOT last November ([read here](#)). However, it may alleviate issues with project setbacks and other related concerns of using American-made products. The new rules apply to funds spent on or after August 16, 2023 ([more information from USDOT here](#)) Key provisions from the updated guidance include:

- **Product Categories:** BABA's preference applies to three categories of products: (a) Iron or steel products, (b) Manufactured products, and (c) Construction materials.
- **Manufacturing Processes for Construction Materials:** The guidance outlines standards defining "all manufacturing processes" for construction materials, as required by statute.
 - Construction Materials: The guidance defines construction materials, including non-ferrous metals, plastics, glass, lumber, and Section 70917 (c) materials.
 - Section 70917(c) Materials: These include cement and cementitious materials, aggregates like stone and sand, or aggregate binding agents or additives.
- **Waivers:** The guidance restates circumstances defined in the statute for justifying waivers for: (a) Public interest, (b) Unreasonable cost, and (c) Nonavailability.
 - Requesting Waivers: Federal financial assistance recipients can request waivers if they believe a waiver is justified.
 - Waivers for Nonavailability and Unreasonable Cost: Federal agencies may grant waivers for nonavailability or unreasonable cost in certain circumstances.
 - "The waiver applies to a single financial assistance award obligated on or after August 16, 2023, for which:
 - The total value of the non-compliant products is no more than the lesser of \$1 million or 5% of total applicable costs for the project; or
 - The total amount of Federal financial assistance applied to the project, through awards or subawards, is below \$500,000."
- **Application Beyond BIL Funding:** BABA's requirements apply to all Federal financial assistance for infrastructure projects, whether funded through BIL or other sources.
- **Buy America Requirement for Manufactured Products:** Manufactured products must be made in the U.S., and over 55% of the cost of U.S.-made components must exceed the cost of all components.
- **Buy America Requirement for Iron and Steel:** All manufacturing processes for iron and steel products must occur in the U.S.

FHWA announced the Local Technical Assistance Program (LTAP), a network of 51 local Centers across the U.S. and in Puerto Rico ([read here](#)). LTAP supports local and rural road agencies by offering training, technical assistance, and technology transfer services to aid in the management and maintenance of their roadway systems. Resources including available training, e-learning, and online materials can be accessed through the LTAP site, and an upcoming calendar of events is also available.

FHWA announced the Tribal Technical Assistance Program (TTAP), which offers technical assistance to Tribal governments to help them administer their transportation programs ([read here](#)). The TTAP includes specific centers dedicated to this purpose, and a compendium of online training courses is available to assist local and Tribal communities in their transportation efforts.



Congressional Hearings & Markups

**Members of Congress adjourned for August Recess on July 27th (one day earlier than expected). The Senate will be in recess until September 5th, and the House will be in recess until September 12th.*

National Transportation News

On August 17th, a federal judge denied NJ Transit's request to halt a union strike vote by the Brotherhood of Locomotive Engineers and Trainmen ([read here](#)). Union members are voting on a potential strike now, with results to be announced on August 31st, but immediate action is unlikely due to legal cooling-off periods. If a strike occurs, it could place additional pressure on regional transportation systems and mobility. The buffer time could afford NJ MPOs and other regional transportation providers time to adjust plans if necessary.

Texas has introduced new fees for electric vehicle (EV) drivers, including a \$200 annual registration fee and a \$400 upfront fee for purchasing a new EV ([read here](#)). These fees will take effect on September 1st, 2023. The charges aim to compensate for the reduction in gasoline tax revenue as more drivers switch to EVs. Around 30 states have implemented similar registration fees for EVs. Concerns are rising around these fees as they may discourage EV adoption – a key goal of the Biden Administration –especially for individuals with lower incomes. Despite federal incentives for EVs, state-level decisions will continue to play a significant role in shaping the EV market and consumer choices.

On August 11th, California announced it would allow autonomous vehicles (AVs) to operate a 24/7 paid AV taxi service in San Francisco ([read here](#)). This is a significant development for the AV industry, as companies like Cruise and Waymo see this as a step towards commercializing AV technology. However, the impact of this decision on the rest of the country is uncertain. While some states follow California's lead on environmental regulations, they may not necessarily adopt the same approach to AVs, as most states have already established their own rules for testing and deploying autonomous vehicles. Concerns about unsafe driving behavior of AVs have also sparked opposition to widespread AV taxi deployment. At the federal level, efforts are being made to create a bipartisan proposal on AV regulation, although challenges remain in untangling complex legislative issues. The FMCSA has also opened the door for waivers from its break-rule decisions in California and Washington, sparking opposition from groups like the American Trucking Associations due to concerns about regulatory inconsistencies.

The fight over funding for fueling stations in California could signal the decline of hydrogen-powered passenger cars in the state. Proposed legislation, CA AB241 (23R), seeks to reduce dedicated funding for hydrogen passenger vehicle fueling stations and allocate more support to electric vehicle infrastructure ([read here](#)). While hydrogen-powered cars have received substantial state support, they only account for about 1 percent of zero-emission sales in California, compared to electric vehicles' 25 percent share of new-car sales overall. This shift in funding reflects a growing focus on electric vehicles, as their market share increases and the challenges of producing and distributing hydrogen become more evident. The legislation's outcome could influence the future of hydrogen-powered vehicles in the state.



NOFOs

In August, FRA will announce the availability of \$104 million in funding through the FY22-23 Restoration and Enhancement Grant Program ([read here](#)). This program is designed to provide operating assistance grants for initiating, restoring, or enhancing intercity passenger rail transportation.

Learn about federal grants available to MPOs and key NOFO information in AMPO's NOFO Tracker ([access here](#)). The Tracker is available on ampo.org under the "Resources" drop down.