

### What Is Build America, Buy America?

When Congress passed the Bipartisan Infrastructure Law—also known as the Infrastructure Investment and Jobs Act—it not only made a once-in-a-generation investment in our nation’s infrastructure, it also created a historic opportunity to increase domestic manufacturing in communities across the country. With this game-changing law, we are rebuilding America’s roads, bridges and rails, expanding access to clean drinking water, ensuring every American has access to high-speed internet, tackling the climate crisis, advancing environmental justice, and investing in communities that have too often been left behind, all while maximizing the use of American iron and steel, manufactured goods and construction materials.

We are building a national network of 500,000 electric vehicle chargers across the country. We are making sure that every child—and every American—has clean water to drink. We are creating good-paying union jobs, helping to revitalize American manufacturing, and positioning the United States to lead the 21st century.

By requiring the use of Made in America content, the Build America, Buy America provisions in the Bipartisan Infrastructure Law will help stimulate private sector investments in domestic manufacturing, bolster critical supply chains, and support the creation of good-paying union jobs so that America’s workers and firms can compete and lead globally for years to come.

As we’ve learned from the pandemic, America’s critical supply chains have gaps. Manufacturers will need time to find on-shore suppliers and scale up production to meet demand. Agencies have the authority to issue waivers from Build America, Buy America requirements, but will do so judiciously—only as needed—and strategically, with an aim toward ensuring that Made in America goods will be used once firms make needed investments to expand domestic production. Waivers will be limited, targeted, and, where appropriate, conditional. They will cover specific items or specific periods of time to enable agencies, recipients, and the private market to build capacity and respond to the new conditions.

Waivers will not be an *alternative* to increasing domestic production, but a *tool* to promote investment in our domestic manufacturing base, strengthen critical supply chains, and position U.S. workers and businesses to compete and lead globally in the 21<sup>st</sup> century. Unlike in the past, Build America, Buy America waivers will not foreclose American manufacturing, but send clear market signals, creating an incentive for American firms to invest in America and create good jobs in our communities.

Importantly, Build America, Buy America applies to Federal financial assistance programs for infrastructure, *whether or not those programs received funding in the Bipartisan Infrastructure Law*. These new, across-the-board domestic content requirements present an unprecedented opportunity to support good-paying construction *and* manufacturing jobs while strengthening our industrial base and promoting American innovation for years to come.

Successful Build America, Buy America implementation will create an opportunity for a “virtuous cycle” in which infrastructure investment, critical supply chain efforts, and other Biden-Harris Administration priorities, including sustainability and equity, align and support each other.

***What Do Federal Financial Assistance Recipients Need to Know About Build America, Buy America?***

*Q. What are the requirements of Build America, Buy America?*

(1) All iron and steel items used in covered projects must be produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) All manufactured products used in covered projects must be 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.

(3) All construction materials used in covered projects must be manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

*Q. What Federal financial assistance awards are covered by Build America, Buy America?*

Build America, Buy America provisions apply to Federal financial assistance awards (e.g., grants and loans) made after May 14, 2022 that will be used to construct, alter, maintain, or repair infrastructure in the United States. Note that these provisions are not limited to infrastructure projects funded by the Bipartisan Infrastructure Law. **Assistance recipients who have questions about whether their particular project is covered by Build America, Buy America should contact the funding agency.**

*Q. Can Build America, Buy America requirements be waived?*

Yes, when necessary. Agencies may waive Build America, Buy America requirements on the basis of (1) nonavailability, (2) unreasonable cost, or (3) public interest. All waivers must be in writing, published for public comment, and approved judiciously. Waivers should also be limited to specific projects or time periods, targeted to only the products necessary, and when appropriate, conditional, to maximize the use of American-made items. **Assistance recipients who have questions about waivers should contact the funding agency.**

*Q. What types of infrastructure are covered by Build America, Buy America?*

Infrastructure includes projects with public functions, such as roads, highways, bridges, public transportation facilities, dams, ports, harbors, railroads, freight and intermodal facilities, airports, water systems, electrical transmission facilities and systems (including structures, facilities, and equipment that generate, transport, and distribute energy, including electric vehicle charging facilities), broadband infrastructure, and buildings. **Assistance recipients who have questions about whether their particular project is considered infrastructure should contact the funding agency.**

*Q. When and how do I apply for a waiver?*

Waivers should be used judiciously. Federal financial assistance recipients must first take proactive steps to identify qualifying Made in America articles, materials, and supplies for their projects. **Recipients who have worked diligently to identify qualifying items, but concluded a waiver may still be necessary, should contact the funding agency to learn how to apply for a waiver.**

*Q. When do Build America, Buy America requirements expire?*

Build America, Buy America has no expiration date. We encourage and welcome stakeholder input about how we can support recipients in the application of Build America, Buy America as we work to bolster America's manufacturing base and create good manufacturing and construction jobs in communities across the country.

## Overview of Build America, Buy America Guidance

### **Build America, Buy America Sourcing Requirements**

The following conditions apply to Federal financial assistance obligations for infrastructure made after May 14, 2022:

- for iron and steel items, all manufacturing processes, from the initial melting stage through the application of coatings, must occur in the United States
- for manufactured products, the final manufacturing process must occur in the United States and the cost of components mined, produced, or manufactured in the United States must be greater than 55 percent
- for construction materials, all manufacturing processes must occur in the United States

An article, material, or supply should only be classified into one of the categories above.

### **Covered Federal Financial Assistance Programs and Projects<sup>1</sup>**

- Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans and loan guarantees.
- A Federal financial assistance program for infrastructure is a program in which funds are used for an infrastructure project, regardless of whether infrastructure is the primary purpose of an award. The Build America, Buy America conditions only apply to infrastructure portions of an award and apply even if Federal funds are not paying for the entire project.
- “Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.
- “Infrastructure” includes roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; buildings and real property. The generation, transportation, and distribution of energy—including electric vehicle charging facilities—are considered infrastructure. Private homes for personal use are not.
- Build America, Buy America conditions do not apply to tools, equipment, and supplies brought to a construction site and removed at or before the completion of the project or to equipment and furnishings (such as chairs) used at or within the finished infrastructure project, but which are not an integral part of the structure or otherwise affixed to the project. For example, Build America, Buy America conditions would apply to the funds used to construct a library, but not to funds used to buy books or furniture for the library.

### **Waiver Types**

With the concurrence of the Made in America Office, a Federal agency may waive the application of a Buy America Preference when the agency finds that:

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<sup>1</sup> Some programs or projects may not be covered by Build America, Buy America due to exclusions or the operation of waivers. Assistance recipients who have questions about whether their particular project is covered by Build America, Buy America should contact the funding agency.

- one or more iron or steel items, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “**nonavailability waiver**”),
- the inclusion of one or more iron or steel items, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “**unreasonable cost waiver**”), or
- applying the domestic content procurement preference for one or more iron or steel items, manufactured products, or construction materials would be inconsistent with the public interest (a “**public interest waiver**”)—public interest waivers are the most flexible type of waiver, but, like all waivers, must be necessary and appropriately justified.

### **Waiver Principles**

Federal agencies must be judicious in their use of waivers. They should apply the following principles when developing waiver proposals:

- **Limited:** Waivers should be project- or award-specific whenever possible, and time-limited when not limited to certain projects or awards.
- **Targeted:** Waivers should cover only the products or category of products necessary (rather than covering broad sectors such as “all manufactured products”).
- **Conditional:** Agencies should consider including conditions on the waiver, when appropriate and consistent with law, that advance the goal of Buy America policies.

### **Waiver Process Requirements**

- Agencies must post waivers for at least 15 days for public comment
- Agencies should consult with MIAO prior to posting a waiver with broader applicability (e.g., program-level waiver) to ensure it covers no more than necessary
- Agencies must submit waivers to MIAO for review after public comment to determine if it is consistent with policy
- MIAO, working with GSA, is working to build functionality on the existing [waiver transparency website](#)
- Agencies with existing general applicability waivers that are more than five years old (unless those waivers are product-specific) must begin reviewing those waivers by November 15, 2022. In the meantime, those waivers remain in force.

### **Construction Materials**

- Construction materials include an article, material, or supply that is or consists primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; and drywall.
- The Build America, Buy America Guidance establishes a preliminary standard for construction materials, requiring the last two steps in the manufacturing process of the construction material be completed in the United States. OMB is seeking stakeholder input as it works to update this preliminary standard with a final standard, consistent with Build America, Buy America.