



- I. Application of a Buy America Preference
 - a. By **May 14, 2022**, federal agencies must ensure that all eligible federally awarded infrastructure projects incorporate the “*Buy America*” preference in compliance with **section 70914** of the [Infrastructure Investment and Jobs Act \(IIJA\) of 2021](#).
 - i. For fair notice purposes, agencies should begin including appropriate language in Notices of Funding Opportunities (NOFOs) published before May 14..
 - b. The IIJA provides the following criteria for a Buy America preference:
 - i. All **iron and steel** used in the project are made in the United States with American made components making up no less than 55% of the total cost.
 - ii. All **manufactured products** must be produced in the United States with American made components making up 55% of the total product cost.
 1. Agencies are permitted to use a different standard for minimum domestic content, if previously established under applicable law or regulation.
 - iii. All construction materials must be made in America, with all manufacturing processes occurring domestically.
- II. Applicability to Federal Financial Assistance Program
 - a. [Guidance](#) applies to all Federal financial assistance used for infrastructure related projects, regardless of funding origination.
 - i. Federal financial assistance is defined as; assistance received by non-federal entities in the form of grants, cooperative agreements, loans and more.
 - ii. Non-federal entities are defined as; states, local governments, tribal governments, academic institutions, and nonprofit organizations.
 1. ***For-profit entities are NOT considered non-federal entities under this guidance.**
 2. However, this does not exempt for-profit entities from domestic content requirements imposed by independent statutory authorities
 - b. Federal agencies should consult [E.O. 13175](#), *Consultation and Coordination with Indian Tribal Governments*, before applying a Buy America preference to a program that will affect tribal communities.
 - c. Infrastructure projects authorized due to a major disaster or emergency are not obligated to follow this guidance.
 - d. Infrastructure is defined by the IIJA to include the structures, facilities, and equipment for:
 - i. All modes of transportation, utilities, buildings, and drinking and wastewater systems.
 - ii. Structures, facilities, and equipment for the generation and distribution of electricity (including EV charging) is also considered infrastructure.
 - iii. The term “infrastructure” should be considered flexible and non-exhaustive
 - iv. “Infrastructure” related projects should serve a public function and have a degree of public ownership or accommodation.
 - e. Federal agencies are advised to consult with the Office of Management and Budget (OMB) for clarifying questions.
- III. Consistency with International Agreements
 - a. All actions must align with the obligations of the United States under international agreements.
- IV. Avoid Unnecessary Disruption



- a. Agencies must work to maintain existing program policies that align with the domestic content requirements of IJIA guidance to avoid unnecessary changes or disruption in programs that already meet Build America, Buy America requirements.
- V. Effective Date for Awards
 - a. All federal financial assistance awards for infrastructure made on or after May 14, 2022, are obligated to comply with the requirements within this guidance document.
 - b. Public interest waivers may be used judiciously for awards and amendments made on or after May 14th, 2022, when budgets have already been agreed upon.
- VI. Articles, Materials, and Supplies for Infrastructure
 - a. The Buy America preference under this guidance only applies to = manufactured products, construction materials, and iron and steel for use in an infrastructure project. This preference applies to the whole of a project even if not fully funded through federal assistance.
 - b. This preference does not apply to articles or materials that are not integral to, or permanently affixed to the structure or project.
- VII. Issuing Buy America Waivers
 - a. Waivers are eligible for the following situations:
 - i. Applying the preference would be inconsistent with the public interest (public interest waiver).
 - ii. There are not satisfactory quantity and quality levels in the United States for necessary project materials that fall under the Buy America preference (non-availability waiver).
 - iii. The inclusion of these materials will increase the project cost by more than **25%** (unreasonable cost waiver).
 - b. Before issuance, waivers should be electronically published and made available for public comment for a minimum of 15 days. The waiver should then be sent to the Made in America Office (MIAO) for review before any determination.
 - c. If a project includes a multitude of federal agencies, the agency with the highest financial investment will serve as the “*Cognizant Agency for Made in America.*”
 - i. Joint waivers are permitted.
 - d. Exceptions for unforeseen and exigent circumstances
 - i. Agencies may forego public comment and submission to MIAO in situations of urgent need. The agency will have to submit a report to MIAO no later than 30 days outlining why it was necessary to forego MIAO requirements for waiver issuance.
 - e. Waiver principles and criteria
 - i. Granted waivers should be at the project level and product specific to avoid undermining the impact of the Buy America preference.
 - ii. Waivers should always be structured to maximize domestic activity in a project.
 - iii. All waivers should be restricted principally by length of time.
 - f. Non-availability waivers
 - i. Recipients should perform thorough market research before being granted this waiver.
 - g. Unreasonable cost waivers
 - i. Recipient should provide adequate documentation that no domestic alternatives within cost exist.
 - 1. Agency assistance is permitted.

- ii. Recipient should also provide comparison of domestic cost to its foreign counterpart (proprietary or public data is permitted).
 - h. Public interest waivers
 - i. Public Interest Waivers should include a written statement and should be made by the head of an agency or authority over a funding program.
 - i. General applicability waivers
 - i. General applicability waivers apply broadly across multiple awards and can be product or non-product specific.
 - ii. These waivers should be reviewed within five years of its issuance.
 - iii. No later than **November 15, 2022**, all federal agencies with existing non-product specific general applicability waivers issue more than five years before **November 15, 2021** shall promptly review each waiver through [Federal Register notice](#).
- VIII. Preliminary Guidance for Construction Materials
 - a. The guidance requires that “all manufacturing processes” for construction materials occur within the United States.
 - b. Non-binding OMB guidance for agencies to classify project construction materials in preparation for compliance with the Buy America standards.
 - i. “Construction materials” refer to any article, material or supply that consists of:
 - 1. Non-ferrous metals
 - 2. Plastic and polymer-based products
 - 3. Glass, lumber, and drywall
 - 4. Materials made of iron, steel, cement and cementitious materials, and products consisting of more than one material are not considered construction materials for the purpose of this guidance
 - c. OMB is fielding additional stakeholder input for final standards on the use construction materials under Buy America requirements.