

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
MATERIALS CONTROL, SOILS AND TESTING DIVISION

MATERIALS PROCEDURE

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WVDOH BUY AMERICA ACCEPTANCE GUIDELINES

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**1. PURPOSE**

- 1.1 To set forth instructions for compliance with both State and Federal Buy America Requirements (henceforth referred to as “Buy America Requirements”), as listed in this document.
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**2. REFERENCED DOCUMENTS**

- 2.1 PUBLIC LAW 117–58—NOV. 15, 2021, Infrastructure Investment and Jobs Act.
- 2.2 Build America, Buy America Act (BABA).
- 2.3 23 U.S.C. 313 and 23 CFR 635.410 “Buy America Requirements”.
- 2.4 2 CFR part 184 Buy America Preferences for Infrastructure Projects.
- 2.5 M-22-11 Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.
- 2.6 M-24-02 Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.
- 2.7 Chapter 5, Article 19 and Chapter 5A, Article 3, Section 56 of the West Virginia Code, entitled “West Virginia American Steel Act of 2001.”
- 2.8 West Virginia Notary Handbook, Current Edition.
- 2.9 MP 106.10.51 – WVDOH Buy America Waiver Guidelines.
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**3. ACCEPTANCE OF MATERIALS**

- 3.1 This procedure applies to the following:
1. Steel and Iron
  2. Manufactured Products
  3. Construction Materials
  4. Section 70917(c) Materials
- 3.2 An article, material, or supply shall only be classified into a single category listed in Section 3.1. In some cases, an article, material, or supply may not fall under any of these categories. Classification of the category must be made based on the status of article, materials, or supply at the time it is brought to the work site for incorporation into the project. The work site is generally the location of the project at which the materials will be incorporated. An article, material, or supply permanently incorporated into a project must meet the Buy America Preference for only the single category in which it is classified.
- 3.3 A Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to a project. As such, it does not apply to

tools, equipment, and supplies, such as temporary scaffolding brought to the construction site and removed at or before the completion of the project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished project but are not an integral part of the structure or permanently affixed to the project.<sup>1</sup>

- 3.3.1 Buy America preference does not apply to materials such as temporary paint or temporary traffic control devices.

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#### **4. STEEL AND IRON**

- 4.1 Pursuant to Buy America Requirements, all manufacturing processes for steel and iron materials must take place in the United States.

4.2 Definition

- 4.2.1 “Iron or steel products” means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

- 4.2.1.1 “Predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

4.3 Standard

- 4.3.1 This includes all processes from the initial melting stage through application of coatings occurs in the United States.

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#### **5. MANUFACTURED PRODUCTS**

- 5.1 The Federal Highway Administration (FHWA) has a longstanding waiver in effect exempting Manufactured Products from Buy America Requirements.

5.2 Definition

- 5.2.1 Manufactured products means:

1. Articles, materials, or supplies that have been:
  - A. Processed into a specific form and shape;
  - B. or Combined with other articles, materials,
  - C. or supplies to create a product with different properties than the individual articles, materials, or supplies.
2. If an item is classified as an iron or steel product, or a construction material, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

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<sup>1</sup> M-24-02: Memorandum for the Heads of Executive Departments and Agencies, Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, Page 4

5.3 Standard

5.3.1 Pursuant to Buy America Requirements, all manufactured products used in the project are 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, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product.<sup>2</sup>

5.3.1.1 In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

1. For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued).
2. For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

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**6. CONSTRUCTION MATERIALS.**

6.1 Pursuant to Buy America Requirements, all Construction Materials are required to be produced in the United States. All manufacturing processes for the Construction Materials shall occur in the United States.

6.2 Definition

6.2.1 Construction materials means articles, materials, or supplies that consist of only one of the items listed in Section 6.2.1.1, except as provided in Section 6.2.1.2. To the extent one of the items listed in Section 6.2.1.1 contains as inputs other items listed in this section, it is nonetheless a construction material.

6.2.1.1 The listed items are:

1. Non-ferrous metals;
2. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
3. Glass (including optic glass);
4. Fiber optic cable (including drop cable);
5. Optical fiber;
6. Lumber;
7. Engineered wood; and
8. Drywall.

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<sup>2</sup> M-24-02: Memorandum for the Heads of Executive Departments and Agencies, Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, Page 15-16.

6.2.1.2 Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

6.3 Standard

6.3.1 The Buy America Preference applies to the following construction materials incorporated into projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.”

1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2. Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3. Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4. Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
5. Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
6. Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
7. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
8. Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

6.3.2 Except as specifically provided, only a single standard under this section should be applied to a single construction material.

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**7. SECTION 70917(C) MATERIALS**

7.1 The standards developed under BABA 70915(b) (1) shall not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives as inputs of the construction material. These are referred to as 70917(C) materials.

7.2 Definition

7.2.1 Section 70917(c) materials means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See section 70917(c) of the Build America, Buy America Act.

7.3 These materials are exempt from Buy American Requirements.

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**8. BUY AMERICA COMPLIANCE.**

8.1 On a given project, the Division shall not accept, approve, authorize, or make any payments to any Contractor not fully compliant with Buy America.

8.1.1 When Buy America Requirements apply, the Contractor shall furnish a notarized Certificate of Compliance signed by their official with knowledge and authority to certify that all applicable materials and products to be incorporated into the project, including those of any subcontractors and suppliers, are compliant with Buy America Requirements. This shall be done prior to the permanent incorporation of the materials into the project.

8.1.2 The notarized Certificate of Compliance shall contain the following information:

8.1.2.1 Title: Buy America Certification of Compliance.

8.1.2.2 The Name, Address and Contact Information for the Contractor.

8.1.2.3 A contractor statement that demonstrates compliance with Buy America Requirements.

8.1.2.4 The Contract ID for the Material (if applicable).

8.1.2.5 Both the Federal and State Project Number for the Material (if applicable).

8.1.2.6 The name of the material referenced in the Certificate of Compliance. This material name shall be a clear, common name for the material as stated in the proposal. Part Numbers, etc., may also be on the document if the contractor wishes.

8.1.2.7 The Line Item for the Material (if applicable).

8.1.2.8 The Bid and/or Placed Quantity of the Material.

8.1.2.9 Signature of the Contractor and date.

8.1.2.10 A list of materials on the project that “Buy America” applies but are not Buy America compliant.

8.1.2.11 The document must be notarized as per the “West Virginia Notary Handbook.”

8.2 Attachment 1 shows a sample Certificate of Compliance.

- 8.2.1 Multiple items may be listed on the Certificate of Compliance, though all the information for each line must be on the document.
- 8.2.2 A list of these materials may be referenced on an attached page as long as that page is also signed and notarized.

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**9. BUY AMERICA WAIVERS**

- 9.1 Buy America Waivers are outlined in MP 106.10.51 as per “§ 184.7 Federal awarding agency's issuance of a Buy America Preference waiver” and “23 CFR 635.410(c)”.

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**10. BUY AMERICA MATERIALS**

- 10.1 Attachment 2 includes a list of materials and products used in WVDOH construction projects and the applicability of Buy America Requirements. This attachment also shows each category of each based on Section 3.1 of this document. Finally, if the material is not applicable to Buy America Requirements, justification is given. Example exemptions are as follows:
1. Historic Waiver: Manufactured Product is waived by FHWA as per Section 5 of this Document.
  2. Temporary Material: Material is not permanently incorporated into the project.
- 10.1.1 This materials and products list may be updated by the Director of MCS&T as needed to ensure compliance with Buy America Requirements. Any update to this form will be in accordance with guidance from and through an affirmation process with FHWA.
- 10.1.2 Glass added to a permanent paint product requires a Certificate of Compliance.
- 10.1.3 Attachment 3 includes [OMB Memorandum M-24-02](https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02)<sup>3</sup>, dated October 25, 2023, for additional guidance and as the source material for WVDOH’s compliance.

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<sup>3</sup> <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>

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**11. DOCUMENTATION OF BUY AMERICA CERTIFICATION OF COMPLIANCE**

- 11.1 The Certificate of Compliance shall be placed in the QC Plan Folder in ProjectWise (or the current WVDOH approved document retention software) under the contract.

**Michael Mance** Digitally signed by Michael Mance  
Date: 2024.07.24 10:40:20 -04'00'

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Michael A Mance, P.E.  
Interim Director  
Materials Control, Soils & Testing Division

MP 106.10.50 Steward – Materials Control Section  
MM:B  
ATTACHMENTS

## Buy America Certification of Compliance

Acme Construction Company  
123 Main Street  
Charleston, WV 25302

**Ship Date:** 10/31/2023

The below listed materials and products meets all the requirements of all Federal and State Laws for Buy America, including but not limited to: Chapter 5, Article 19 and Chapter 5A, Article 3 Section 56 of the West Virginia Code; 23 U.S.C. 313 Buy America, 23 CFR 635.410 Buy America Requirements, and Build America, Buy America Act, Section 70914.

**This Certification of Compliance is for the material and project listed below:**

CID: 22000005R1

Federal Number: B-0010(000)X

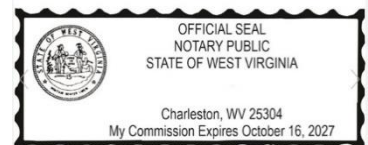
State Number: U002-00-1.00

Line: 0020      Widget, Part Q<sup>i</sup>      500 Cubits

Line: 0025      Widget, Part H<sup>r</sup>      300 Cubits

Non-Compliant Buy America Materials

Line: 0055      Widget, Part I<sup>z</sup>      300 Cubits



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Janie Doe, Contractor President



## DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	Category	CoC Required	Notes
206.003.003.X	Base Reinforcement, Geogrid, Type 1,2	Construction Material	Yes	
211.004.000	Unclassified, Borrow Excavation	Section 70917(c) Material	No	
211.005.000	Rock Borrow Excavation	Section 70917(c) Material	No	
212.002.000	Select Material for Backfill	Section 70917(c) Material	No	
218.003.003	Riprap, Grouted	Section 70917(c) Material	No	
218.003.006	Slope Protection, Concrete	Section 70917(c) Material	No	
219.003.000.OX	CLSM -Type A,B,C - Controlled Low Strength Material	Section 70917(c) Material	No	
311.002.000.X	Free Draining Base Course, Open Graded - Asphalt/Cement	Section 70917(c) Material	No	
401.002.00X	Asphalt Mix, All Types	Section 70917(c) Material	No	
405.002.001.X	Type A,B,C - Chip Seal Aggregate	Section 70917(c) Material	No	
406.PSP.000	High Friction Surface Treatment	Construction Material	Yes	
412.002.001	Bituminous Patching Winter Grade	Section 70917(c) Material	No	
420.001.001	Asphalt, Micro Surfacing	Section 70917(c) Material	No	
420.002.002.X	Aggregate, 2,3FA, Fine, Micro-Surfacing	Section 70917(c) Material	No	
494.PSP.001	Asphalt, Cold In-Place Recycled	Section 70917(c) Material	No	
501.003.001.OX	Concrete, Pavement, All Types	Steel and Iron	Yes	*1
514.003.000	Concrete, Roller Compacted	Steel and Iron	Yes	*1
601.003.00X.OX	Concrete, All Classes	Section 70917(c) Material	No	
601.008.009	Stay-in-Place Fabricated Metal Forms	Steel and Iron	Yes	
601.PSP.001	Polymer, Fiberglass Reinforced (FRP)	Manufactured Material	No	*3
601.PSP.002	Epoxy Resin Injection System	Construction Material	Yes	
601.PSP.003	Epoxy Bonding Compound	Construction Material	Yes	
602.002.000.3	Reinforcing Bars, Uncoated Corrosion Resistant Rebar	Steel and Iron	Yes	
602.007.003	Reinforcing Bars, Splice Connector	Steel and Iron	Yes	
603.002.000.OX	Concrete Members (All Precast/Prestressed)	Steel and Iron	Yes	*1
603.006.002.2	Concrete, Class S-P, Self Consolidating	Section 70917(c) Material	No	
603.PSP.001	Post Tension Rod, Steel	Steel and Iron	Yes	
604.002.000	Concrete for Pipe Culvert	Section 70917(c) Material	No	
604.PSP.001	Pipe, Polyethylene Liner	Steel and Iron	Yes	
605.002.000	Concrete Manholes & Inlets (Precast)	Steel and Iron	Yes	
605.002.000	Concrete Manholes & Inlets (Precast)	Steel and Iron	Yes	*1
605.002.000.01	Steel, Welded Grates for Inlets	Steel and Iron	Yes	
605.002.000.OX	Inlet, All Types	Steel and Iron	Yes	*1
605.002.000.OX	Manhole, All Types	Steel and Iron	Yes	*1
605.002.000.14	Slot Inlet Riser, Perforated	Steel and Iron	Yes	
605.002.000.16	Lift Station & Valve Vault	Steel and Iron	Yes	
607.002.000.01	End Terminal, Flared or Tangent Steel	Steel and Iron	Yes	
607.002.000.02	Blockout, Polymer	Construction Material	Yes	
607.002.000.03	Blockout, Non Plastic	Construction Material	Yes	
607.PSP.000	High Tension Cable Barrier	Steel and Iron	Yes	
607.PSP.001	Cable End Terminal	Steel and Iron	Yes	
609.002.000	Concrete, Sidewalk	Steel and Iron	Yes	*1
609.002.001	Detectable Warning Surface	Construction Material	Yes	
610.002.000	Asphalt Curb	Section 70917(c) Material	No	
612.002.001.X	Tunnel Liner, Steel Plate Pipe, 2/4 Flange	Steel and Iron	Yes	
614.007.000	Lagging, Concrete	Steel and Iron	No	
615.000.000.01	Steel Superstructure, Truss/Arch	Steel and Iron	Yes	
615.000.000.02	Steel Superstructure	Steel and Iron	Yes	
615.000.000.03	Expansion Dam, Steel, Tooth Type	Steel and Iron	Yes	
615.000.000.04	Expansion Dam, Steel, Strip Seal Type	Steel and Iron	Yes	
615.000.000.05	Expansion Dam, Steel, Modular Type	Steel and Iron	Yes	
615.000.000.06	Bearing Assemblies, Steel	Steel and Iron	Yes	
615.000.000.07	Steel Girders	Steel and Iron	Yes	
615.000.000.08	Steel Crossframes	Steel and Iron	Yes	
615.000.000.09	Steel Diaphragms	Steel and Iron	Yes	
615.003.003	Shear Stud Connector, Steel	Steel and Iron	Yes	
616.009.000	Piles, Concrete (Precast)	Steel and Iron	No	
617.004.000	Pipe Railing, Steel	Steel and Iron	Yes	
617.005.000	Railing, Steel, Ferrous Metal	Steel and Iron	Yes	
617.006.000	Railing, Aluminum, Pedestrian	Construction Material	Yes	
620.000.000.01	Culvert, Concrete, Reinforced, Cast In Place, All Types	Steel and Iron	Yes	*1
620.000.000.02	Culvert, Concrete, Three-Sided Structure (Precast)	Steel and Iron	Yes	*1
620.000.000.03	Culvert, Concrete, Arch-Topped, (Precast)	Steel and Iron	Yes	*1
620.000.000.04	Culvert, Concrete, Flat-Topped, (Precast)	Steel and Iron	Yes	*1

## DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	Category	CoC Required	Notes
620.000.000.05	Culvert, Concrete, Reinforced, Two Piece, (Precast)	Steel and Iron	Yes	*1
621.002.001	Flooring Steel Grid, Open Type	Steel and Iron	Yes	
621.002.002	Flooring, Steel Grid, Filled	Steel and Iron	Yes	
623.002.000	Shotcrete, Monofilament Polypropylene Fibers for Pneumatically Applied Mortar	Manufactured Material	No	*3
625.004.003	Steel, Casing Pipe for Drilled Caissons	Steel and Iron	Yes	
625.004.004	CSL (Crosshole Sonic Logging) Testing Tubes for Caissons	Steel and Iron	Yes	
626.004.003	Retaining Wall, Cast In Place	Steel and Iron	Yes	*1
626.005.001	Retaining Wall (Precast)	Steel and Iron	Yes	*1
626.005.001.01	Retaining Wall, MSE, Wall Panels	Steel and Iron	Yes	*1
626.005.001.02	Retaining Wall, MSE Modular Block	Steel and Iron	Yes	*1
626.005.001.03	Retaining Wall, MSE Wire Face	Steel and Iron	Yes	*1
626.005.001.123	Modular Block Sealant	Construction Material	Yes	
626.006.001.3	Retaining Wall, Granular Backfill	Section 70917(c) Material	No	
626.006.002	Retaining Wall, Concrete, Cast in Place	Steel and Iron	Yes	*1
627.PSP.001	Expansion Joint, Foam	Construction Material	Yes	
631.002.000	Electrical, Miscellaneous	Steel and Iron	Yes	*1
632.002.001	Horizontal Drain	Steel and Iron	Yes	
633.002.000	Gutter, Invert Pipe	Steel and Iron	Yes	
633.004.000	Gutter, Concrete	Section 70917(c) Material	No	
633.006.000	Gutter, Dumped Rock	Section 70917(c) Material	No	
634.002.000	Cribbing, Concrete	Steel and Iron	Yes	*1
636.002.001.01	Traffic Control Devices	Temporary Item	No	
636.002.001.02	Warning Lights	Temporary Item	No	
636.002.001.03	Traffic Cones	Temporary Item	No	
636.004.000	Dust Palliatives	Temporary Item	No	
638.002.000	Survey Marker	Steel and Iron	Yes	
638.006.000	Outlet Marker	Steel and Iron	Yes	
642.006.000	Compost Filter Sock	Construction Material	Yes	
645.001.001	Elasticized Expanded Polystyrene - E-EPS	Construction Material	Yes	
645.001.003	Impervious Membrane	Construction Material	Yes	
645.002.001	Soil Reinforcement, Geosynthetic	Section 70917(c) Material	Yes	
645.002.002	Backfill Material	Section 70917(c) Material	No	
651.002.000	Topsoil	Section 70917(c) Material	No	
657.002.001	Supports, Beams	Steel and Iron	Yes	
657.002.006	Supports, Pipe, Steel	Steel and Iron	Yes	
657.002.008	Support, Sign, Steel, Anchor Bolt, Roadway	Steel and Iron	Yes	
657.002.010	Supports, Tubular, Steel	Steel and Iron	Yes	
657.002.011.1	Supports, Steel, Channel Bar (U Channel)	Steel and Iron	Yes	
657.002.011.2	Supports, Steel, Breakaway Splice Devices	Steel and Iron	Yes	
658.002.000	Sign Support, Steel, Overhead	Steel and Iron	Yes	
658.002.007	Sign Support, Steel, Anchor Bolt O-H	Steel and Iron	Yes	
661.002.001.1	Signs, Aluminum, Flat Sheet Finished	Manufactured Material	No	*3
661.002.001.2	Signs, Aluminum, Extruded Panel Finished	Manufactured Material	No	*3
661.002.001.3	Sign Hardware	Steel and Iron	Yes	
661.002.015	Delineators, XS1 Bicycle Rail	Construction Material	Yes	
662.002.007.1	Luminaires, Roadway, Area, Underpass, Sign Light	Manufactured Material	No	*3
662.002.007.2	Signs, Internally Illuminated LED	Manufactured Material	No	*3
662.002.013.1	Pole, Steel, Lighting Support	Steel and Iron	Yes	
662.002.013.1.6	Lighting Support, Steel, Anchor Bolt	Steel and Iron	Yes	
662.002.013.2	Lighting Support, Steel, High Mast Type	Steel and Iron	Yes	
662.002.013.4	Luminaire Support Arm, Steel, Type 1 & 2	Construction Material	Yes	
662.002.013.5	Luminaire Support Arm, Steel, Type 3	Construction Material	Yes	
662.002.013.6	Lighting Pole, Aluminum	Construction Material	Yes	
662.002.013.7	Luminaire Support Arm, Aluminum	Construction Material	Yes	
662.002.014	Navigation Lighting System	Manufactured Material	No	*3
667.PSP.000	LED Dynamic Message Sign	Manufactured Material	No	*3
679.002.002.1	Concrete, Latex Modified	Section 70917(c) Material	No	
679.002.002.2	Concrete, Microsilica	Section 70917(c) Material	No	
688.005.004	Soluble Salt Removers	Section 70917(c) Material	No	
689.000.000	Metallizing, Steel Coating	Construction Material	Yes	
701.001.000.7	Cement, Type UHR	Section 70917(c) Material	No	
701.001.000.8	Cement, Portland, Type 1 Low - Alkali	Section 70917(c) Material	No	
701.001.000.X	Cement, Portland, All Types	Section 70917(c) Material	No	
701.003.000	Cement, Type 1L - Blended Hydraulic	Section 70917(c) Material	No	

## DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	Category	CoC Required	Notes
701.004.000	Cement, Masonry	Section 70917(c) Material	No	
704.00X.00X.0X	Aggregate - All Types/Classes	Section 70917(c) Material	No	
705.004.000.0X	Asphalt, Emulsion, All Types	Section 70917(c) Material	No	
705.005.000.0X	Asphalt, Liquid, All Types	Section 70917(c) Material	No	
705.007.000	Asphalt, Dampproofing and Water-Proofing	Section 70917(c) Material	No	
705.008.000	Asphalt, Dampproofing and Water-Proofing, Primer	Section 70917(c) Material	No	
705.011.000.0X	Asphalt, Liquid, All Types	Section 70917(c) Material	No	
707.001.001	Type M Admixture, Concrete, Air-Entraining	Section 70917(c) Material	No	
707.002.002.01.1	Type D Admixture, Concrete Water-Reducing And Retarding	Section 70917(c) Material	No	
707.002.002.01.2	Type G Admixture, Concrete Water-Reducing And Retarding,	Section 70917(c) Material	No	
707.002.002.01.3	Admixture, Citric Acid (Retarder)	Section 70917(c) Material	No	
707.003.001.1	Type A Admixture, Concrete, Water-Reducing	Section 70917(c) Material	No	
707.003.001.2	Type F Admixture, Concrete, Water-Reducing	Section 70917(c) Material	No	
707.004.001	Fly Ash - SCM, Supplementary Cementitious Material	Section 70917(c) Material	No	
707.004.002	Slag Cement - SCM, Supplementary Cementitious Material	Section 70917(c) Material	No	
707.004.003	Silica Fume - SCM, Supplementary Cementitious Material	Section 70917(c) Material	No	
707.004.004	Natural - SCM, Supplementary Cementitious Material	Section 70917(c) Material	No	
707.005.000	Admixture, Latex	Section 70917(c) Material	No	
707.006.000	Burlap, Polyethylene Coated	Temporary Item	No	
707.007.000	Burlap, Jute or Kenaf	Temporary Item	No	
707.008.000	Curing, Concrete, Waterproof Paper	Temporary Item	No	
707.009.000	Curing, Concrete, Liquid Membrane Compound	Temporary Item	No	
707.010.000	Curing, Concrete, White Poly Sheeting	Temporary Item	No	
707.011.000	Coating, Epoxy Resin Protection, Type 3, Grades 1 or 2, Class B or C	Construction Material	Yes	
707.012.002	Sealer, Concrete	Construction Material	Yes	
707.013.001	Type C Admixture, Concrete, Accelerating	Section 70917(c) Material	No	
707.014.001	Admixture, Concrete, Water-Reducing & Accelerating, Type E	Section 70917(c) Material	No	
707.015.001	Type D - Admixture, Concrete, Hydration Control Stabilizing	Section 70917(c) Material	No	
707.016.001	Coating Materials, Concrete Protection	Construction Material	Yes	
707.017.001	Type S Admixture, Concrete, Specialized	Section 70917(c) Material	No	
707.018.001	Admixture, Concrete, Foaming Agent	Section 70917(c) Material	No	
708.001.001	Expansion Joint, Cork	Manufactured Material	No	*3
708.001.002	Expansion Joint, Bituminous Fiber	Manufactured Material	No	*3
708.002.001	Joint Seals, Preformed Elastomeric, Neoprene	Construction Material	Yes	
708.002.002	Expansion Joint, Sponge Rubber	Manufactured Material	No	*3
708.003.000	Joint Sealant, Hot-Poured for Concrete and Asphalt Pavements	Manufactured Material	No	*3
708.004.001.X	Sealant, Silicone Joint, All Types	Construction Material	Yes	
708.004.002	Joint, Back-up Material	Manufactured Material	No	*3
708.009.000	Bitumen Sealant, Concrete and Masonry	Section 70917(c) Material	No	
708.010.001	Waterstops (Elastomer Material), Polyvinylchloride	Construction Material	Yes	
708.010.002	Waterstops (Elastomer Material), Rubber	Construction Material	Yes	
708.PSP.001	Neoprene Sheet for Semi-Integral Abutments	Manufactured Material	No	*3
709.000.000	Steel, Miscellaneous	Steel and Iron	Yes	
709.000.000.0	Welding Electrodes, Piles	Steel and Iron	Yes	
709.001.000.1	Reinforcing Bar, Steel Rebar	Steel and Iron	Yes	
709.001.000.2	Reinforcing Bar, Steel, Epoxy Coated, Coaters Rebar	Steel and Iron	Yes	
709.001.000.3	Epoxy Powders for Rebar	Construction Material	Yes	
709.002.000.1	Reinforcement, 7-Wire Strand, Prestressing	Steel and Iron	Yes	
709.002.000.2	Reinforcement, Steel Bar, High Strength, Prestressing	Steel and Iron	Yes	
709.003.000	Bolt, Steel, Wire Mesh, Hook, Expansion	Steel and Iron	Yes	
709.004.000.1	Wire, Steel, Reinforcement	Steel and Iron	Yes	
709.004.000.2	Welded Wire, Steel, Reinforcement	Steel and Iron	Yes	
709.005.000	Pavement Reinforcement, Expanded Metal	Steel and Iron	Yes	
709.006.000	Bar or Rod Mats, Steel, Fabricated	Steel and Iron	Yes	
709.007.000	Bolt, Joint Tie Bolt Assembly, (J-Hook)	Steel and Iron	Yes	
709.008.000	Structural Metal, Steel, High Strength Low Alloy	Steel and Iron	Yes	
709.010.000.1	Gray Iron Castings	Steel and Iron	Yes	
709.010.000.2	Iron Castings, Ductile Iron Castings	Steel and Iron	Yes	
709.012.000.1	Structural and Eyebar, Steel, (Piling)	Steel and Iron	Yes	
709.012.000.2	Lagging, Steel	Steel and Iron	Yes	
709.015.000	Dowel Bars and Dowel Baskets, Assemblies, Coated	Steel and Iron	Yes	
709.017.000	Pipe, Steel, Welded & Seamless	Steel and Iron	Yes	
709.018.002	Copper Alloy Castings for Name Plates For Bridges	Steel and Iron	Yes	
709.021.000	Pipe, Steel, Floor Drains & Down-Spouts	Steel and Iron	Yes	

## DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	Category	CoC Required	Notes
709.024.002	Bolt, Steel, High Strength A325 / A449	Steel and Iron	Yes	
709.024.003	Nut, Steel, High Strength	Steel and Iron	Yes	
709.024.004	Washer, Steel, High Strength	Steel and Iron	Yes	
709.036.000	Aluminum Alloy, Bolts, Nuts, and Set Screws	Steel and Iron	Yes	
709.037.000	Aluminum Alloy, Washers	Steel and Iron	Yes	
709.042.000	Steel, Galvanized Pipe or Tubing for Horizontal Drains	Steel and Iron	Yes	
709.045.000	Guardrail Posts, Galvanized Steel	Steel and Iron	Yes	
709.046.000	Post, Braces & Grate Frames, Fence, Steel	Steel and Iron	Yes	
709.046.000.1	Post, Studded Tee	Steel and Iron	Yes	
709.050.000	Pile Points, Steel (Piling)	Steel and Iron	Yes	
709.051.000	Sign Support Surface Mount Bracket, Breakaway Device	Steel and Iron	Yes	
709.052.000	Sign Support, Omni-Directional Breakaway Device, Steel Beam,	Steel and Iron	Yes	
709.053.000	Supports, Steel, Tubular	Steel and Iron	Yes	
709.054.000	Sign Support Back to Back U-Channel, Breakaway Device	Steel and Iron	Yes	
709.055.000	Sign Support Bracket - Barrier Wall	Steel and Iron	Yes	
710.002.002	Hardwood, Structural	Construction Material	Yes	
710.002.003	Hardwood, Bridge Decking	Construction Material	Yes	
710.002.004	Graded Material	Section 70917(c) Material	No	
710.003.000	Preservative Treatment	Manufactured Material	No	*3
710.004.000	Wood Preservers	Construction Material	Yes	
710.005.000	Post, Wood, Guardrail, Rectangular	Construction Material	Yes	
710.005.000.4	Post, Wood for Fence and Signs	Construction Material	Yes	
710.006.000	Plywood	Construction Material	Yes	
710.007.000	Common Lumber	Construction Material	Yes	
710.008.000	Poles, Service and Lighting, Wood	Construction Material	Yes	
711.005.000	Concrete Protective Coatings And Stain	Construction Material	Yes	
711.006.000.1	Paint, Zinc Primers, Organic	Construction Material	Yes	*2
711.006.000.2	Paint, Zinc Primers, Inorganic	Construction Material	Yes	*2
711.012.000	Paint, Epoxy Coatings	Construction Material	Yes	*2
711.022.000	Paint, Zinc Rich Low VOC System	Construction Material	Yes	*2
711.022.003	Paint, Intermediate Coat	Construction Material	Yes	*2
711.022.004	Paint, Top Coat	Construction Material	Yes	*2
711.040.000	Paint, Temporary, White, Yellow Traffic	Temporary Item	No	
711.041.000.1	Paint, White or Yellow, Fast-Dry Traffic	Construction Material	Yes	*2
711.041.000.2	Paint, Yellow, Fast-Dry Traffic	Construction Material	Yes	*2
712.004.000	Guardrail, Fasteners and Anchor Bolts, Stains for Galvanized Steel	Steel and Iron	Yes	
712.004.001	Guardrail Splice Bolt	Steel and Iron	Yes	
712.004.002	Guardrail Post Bolt	Steel and Iron	Yes	
712.004.003	Guardrail Nuts	Steel and Iron	Yes	
712.004.004	Guardrail Washers	Steel and Iron	Yes	
712.004.005	Guardrail Beam, Steel	Steel and Iron	Yes	
712.004.007	Guardrail End, Steel	Steel and Iron	Yes	
712.005.000	Guardrail, Fasteners and Anchor Bolts, Zinc-Aluminum-Magnesium Alloy Coating	Steel and Iron	Yes	
712.008.001	Fence, Steel, Chain-Link	Steel and Iron	Yes	
712.009.000.1	Fence, Wire, Steel, Right of Way, Zinc Coated (Galvanized) Class 1 Coating	Steel and Iron	Yes	
712.009.000.2	Fence, Wire, Steel, Right of Way, Zinc Coated (Galvanized) Class 3 Coating	Steel and Iron	Yes	
712.010.000	Barbed Wire, Coated Steel	Steel and Iron	Yes	
712.011.000	Fence, Safety	Steel and Iron	Yes	
713.002.000	Pipe and Pipe Arch, Metallic Coated Corrugated Steel	Steel and Iron	Yes	
713.003.000	Pipe and Pipe Arch, Asphalt Coated Corrugated Steel	Steel and Iron	Yes	
713.005.001	Pipe, Fiber Bonded Full Bituminous Coated Steel	Steel and Iron	Yes	
713.018.000	Box Culvert, Aluminum Alloy Structural Plate	Steel and Iron	Yes	
713.020.000	Pipe, End Sections for Corrugated Steel Pipe and Pipe Arch	Steel and Iron	Yes	
713.024.000	Pipe and Pipe Arch, Aluminum Coated Corrugated Steel	Steel and Iron	Yes	
714.002.000	Pipe, Reinforced Concrete Culvert, Storm Drain & Sewer, Class III, IV, V	Steel and Iron	Yes	*1
714.003.000	Pipe, Concrete, Arch, Storm Drain & Sewer	Steel and Iron	Yes	*1
714.004.000	Pipe, Reinforced Concrete, Elliptical Culvert, Storm Drain & Sewer	Steel and Iron	Yes	*1
714.005.000	Pipe, Perforated Concrete	Steel and Iron	Yes	*1
714.007.000	Box Culverts, Reinforced Concrete, Precast	Steel and Iron	Yes	*1
714.008.000	Concrete End Sections	Steel and Iron	Yes	*1
714.017.000	Pipe, Polypropylene, Dual Wall, 12-60 Inches	Construction Material	Yes	
714.018.000	Pipe, High Density Polyethylene, Steel Reinforced	Steel and Iron	Yes	*1
714.019.000.1	3-6 inches Perforated Pipe, High Density Polyethylene, Profile Wall	Construction Material	Yes	

DOH-M-22 WVDH Buy America Requirement Materials

AWP Material Code	Material Description	Category	CoC Required	Notes
714.019.000.2	3-10 inches Non Perforated Pipe, High Density Polyethylene, Profile Wall	Construction Material	Yes	
714.019.000.3	12-60 inches Pipe, High Density Polyethylene, Profile Wall	Construction Material	Yes	
714.020.000	Pipe, Perforated Plastic Semicircular	Construction Material	Yes	
714.022.000	Pipe, Polyvinyl Chloride (PVC)	Construction Material	Yes	
714.023.000	Box Culverts, Concrete, Precast Reinforced	Steel and Iron	Yes	*1
714.024.000	Pipe, Storm Drain, Non-Asbestos, Fiber-Cement	Steel and Iron	Yes	
715.001.000	Chloride, Calcium	Temporary Item	No	
715.002.000	Chloride, Sodium	Temporary Item	No	
715.004.001	Cementitious Materials, PCC Concrete Repair Materials	Section 70917(c) Material	No	
715.004.002	Non-Cementitious Materials, Concrete Repairs	Section 70917(c) Material	No	
715.005.000	Cement Grout, Pakaged Dry, Hydraulic, Non-Shrink	Section 70917(c) Material	No	
715.005.000.1	Plant Produced Grout	Section 70917(c) Material	No	
715.006.000	Lime, Hydrated	Section 70917(c) Material	No	
715.007.000	Water for Hydraulic Cement	Section 70917(c) Material	No	
715.008.000	Fabric, Waterproofing	Construction Material	Yes	
715.009.003.6	Delineator Post, Soil Mounted Plastic	Manufactured Material	No	*3
715.009.003.7	Delineator Post, Guardrail Mounted Plastic	Manufactured Material	No	*3
715.009.003.8	Delineator - Type B1	Manufactured Material	No	*3
715.011.00X	Geotextile - Eng Fabric, All Types	Construction Material	Yes	
715.011.010	Engineering Fabric for Pumped Sediment and Erosion Control (Dewatering Device)	Manufactured Material	No	*3
715.012.000	Concrete, Miscellaneous Uses	Section 70917(c) Material	No	
715.013.000	Fabric Pads, Preformed	Construction Material	Yes	
715.014.000	Bearing Pads, Elastomeric, Plain & Reinforced	Steel and Iron	Yes	*1
715.015.000	Neoprene Sheeting for Miscellaneous Items	Construction Material	Yes	
715.016.000.001	Brick, Clay or Shale, Sewer Brick	Section 70917(c) Material	No	
715.016.000.002	Brick, Clay or Shale, Building Brick	Section 70917(c) Material	No	
715.017.000	Brick, Concrete	Section 70917(c) Material	No	
715.018.000	Concrete Units, Masonry	Section 70917(c) Material	No	
715.019.000.01	Concrete Units, Manholes and Inlets (Precast) Special	Steel and Iron	Yes	*1
715.019.000.04	Inlet, All Types	Steel and Iron	Yes	*1
715.019.000.0X	Manhole, All Types (Precast)	Steel and Iron	Yes	*1
715.019.000.14	Lift Station & Valve Vault (Precast)	Steel and Iron	Yes	*1
715.020.000	Precast Concrete Median Barriers (Temporary)	Steel and Iron	Yes	*1
715.022.000	Precast Concrete Median Barriers (Permanent)	Steel and Iron	Yes	*1
715.023.000	Gabion Baskets	Steel and Iron	Yes	*1
715.024.002.X	Matting for Erosion Control, All Types	Construction Material	Yes	
715.025.000	Limestone, Ground Agricultural	Section 70917(c) Material	No	
715.026.001	Fertilizer, Seeding	Temporary Item	No	
715.026.002	Fertilizer, Landscape Planting	Temporary Item	No	
715.027.001.1	Mulch, Straw, Seeding	Temporary Item	No	
715.027.001.2	Mulch, Wood Cellulose, Seeding	Temporary Item	No	
715.027.001.3	Mulch Binder, Chemical, Seeding	Temporary Item	No	
715.027.002	Mulch Materials, Landscape Plantings	Temporary Item	No	
715.028.000	Seed	Temporary Item	No	
715.029.000	Inoculating Bacteria	Temporary Item	No	
715.033.000	Vines and Ground Cover Plants	Temporary Item	No	
715.034.000	Seedling Plants	Temporary Item	No	
715.035.000	Trees and Shrubs	Temporary Item	No	
715.036.000	Asphaltum Base Paint for Tree Surgery	Temporary Item	No	
715.037.001	Tree Stakes	Steel and Iron	Yes	
715.037.002	Wire, Guying and Staking Plants	Steel and Iron	Yes	
715.037.003	Hose, Guying and Staking Plants	Temporary Item	No	
715.037.004	Twine, Tying Wrapped Tree Trunks	Temporary Item	No	
715.037.005	Tree Wrap	Temporary Item	No	
715.037.006	Anti-Desiccant - Emulsion Protective Film	Temporary Item	No	
715.038.000	Manhole Steps	Steel and Iron	Yes	
715.039.000	Elastomeric Gasket & Sealing Material	Construction Material	Yes	
715.040.002	Pavement Preformed Marking Material, Type V	Manufactured Material	No	*3
715.040.006.1	Raised Pavement Markers, Type P-2, RPM	Manufactured Material	No	*3
715.040.006.2	Raised Pavement Marker, Type R-4, RPM	Manufactured Material	No	*3
715.041.001	Traffic Safety Devices, Attenuating Type V	Steel and Iron	Yes	*1
715.041.001.01	Reflective U-Channel Strips	Construction Material	Yes	
715.041.001.02	Channelizer Cones	Temporary Item	No	

DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	Category	CoC Required	Notes
715.041.00X	Traffic Safety Devices, Attenuating All Types	Steel and Iron	Yes	*1
715.042.000.1	Traffic Signal Materials & Equipment	Steel and Iron	Yes	*1
715.042.000.2	Traffic Signals, Miscellaneous	Manufactured Material	No	*3
715.042.005.2	Loops (LPS)	Steel and Iron	Yes	*1
715.042.005.3	Closed Circuit Television (PAS-CCTV)	Manufactured Material	No	*3
715.042.005.4	Pedestrian Detector with Audible	Manufactured Material	No	*3
715.042.005.5	Radar Advance Digital Detection (RADD)	Manufactured Material	No	*3
715.042.005.6	Video Detection Cameras (VTDS)	Manufactured Material	No	*3
715.042.006.2	Signal Sections (V12) (V12P) (G16)	Steel and Iron	Yes	*1
715.042.009.1.2	Signal Supports, Mast Arm	Steel and Iron	Yes	
715.042.009.1.3	Supports, Signal, Video Arm	Steel and Iron	Yes	
715.042.009.2	Signal Supports, Strain Types C1, C1L, C2 and C2L	Steel and Iron	Yes	
715.042.009.2.2	Signal Supports, Anchor Bolts	Steel and Iron	Yes	
715.042.009.4.1	Signal Supports, Aluminum, Pedestal E-1	Steel and Iron	Yes	
715.042.009.4.2	Signal Support, Steel, Pedestal E-2	Steel and Iron	Yes	
715.042.009.4.3	Signal Support, Steel, Pedestal E-3	Steel and Iron	Yes	
715.042.010.1	Conduit, Rigid, Type R	Construction Material	Yes	
715.042.010.2	Conduit, Flexible, PVC Cover	Construction Material	Yes	
715.042.010.3	Conduit, Type P (Polyvinyl Chloride)	Construction Material	Yes	
715.042.011.X	Junction Box, All Types, All Duty, Cast in Place	Steel and Iron	Yes	*1
715.045.000	Bentonite	Section 70917(c) Material	No	
716.001.001	Random Material	Section 70917(c) Material	No	
716.001.001.1	Soil	Section 70917(c) Material	No	
716.001.001.2	Granular Material	Section 70917(c) Material	No	
716.001.001.3	Shale, Soft	Section 70917(c) Material	No	
716.001.002	Rock	Section 70917(c) Material	No	
716.001.003	Shale, Hard	Section 70917(c) Material	No	
716.001.004	Borrow Material	Section 70917(c) Material	No	
718.000.000.1	Waterline Items	Steel and Iron	Yes	
718.000.000.2	Sewerline Items	Construction Material	Yes	
718.001.000	Pipe, Ductile Iron	Steel and Iron	Yes	
718.005.000	Pipe, Plastic (PVC) Waterline	Construction Material	Yes	
718.007.000	Pipe, Plastic (Polyethylene) Waterline	Construction Material	Yes	
718.009.000	Service Line, Copper	Construction Material	Yes	
718.010.000	Gate Valves	Steel and Iron	Yes	*1
718.011.000	Valve Box	Steel and Iron	Yes	*1
718.012.000	Pipe, Casing, Water/Sewer	Steel and Iron	Yes	*1
718.013.000	Fire Hydrants	Steel and Iron	Yes	*1
718.014.000	Meters	Steel and Iron	Yes	*1

Note \*1 - Steel/Iron in this Material are Subject to Buy America Requirements.

Note \*2 - Glass Beads in Paint Require a CoC.

Note \*3 - FHWA has a standing historic waiver for Manufactured Materials.

Note: A CoC is only required if the material is permanently incorporated into the project.

Note: AWP Material Code is for internal use only.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

THE DIRECTOR

October 25, 2023

M-24-02

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young 

SUBJECT: Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure

This memorandum provides supplemental implementation guidance to Federal agencies on: (1) the application of a Buy America preference<sup>1</sup> to Federal financial assistance programs for infrastructure; and (2) the process for waiving such a Buy America preference — including the circumstances under which waivers may be justified as consistent with applicable law and policy.<sup>2</sup> This memorandum rescinds and replaces Office of Management and Budget (OMB) Memorandum M-22-11. In addition, this memorandum removes direct conflicts between the earlier Memorandum M-22-11 and subsequent guidance issued by OMB in part 184 of Title 2 of the Code of Federal Regulations (“CFR”).<sup>3</sup> This memorandum also provides updated guidance on a limited number of topics — including the waiver process — which modifies earlier guidance provided by OMB in Memorandum M-22-11. To the extent that any guidance provided in this memorandum conflicts with guidance in 2 CFR part 184, the guidance in part 184 prevails.

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“BABA”). Pub. L. No. 117-58, §§ 70901-27. BABA strengthens Buy America preferences associated with Federal financial assistance for infrastructure and will bolster America’s industrial base, protect national security, and support high-paying jobs. BABA requires that the head of each covered Federal agency<sup>4</sup> must ensure that none of the funds made available for a Federal financial assistance program for infrastructure are obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.<sup>5</sup>

BABA affirms, consistent with Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America’s Workers* (“the Executive Order”), this Administration’s priority to

<sup>1</sup> 2 CFR 184.3.

<sup>2</sup> 2 CFR 184.7; Executive Order 14005, “Ensuring the Future Is Made in All of America by All of America’s Workers,” 86 FR 7475 (Jan. 28, 2021).

<sup>3</sup> 88 FR 57750 (Aug. 23, 2023).

<sup>4</sup> For the purposes of this guidance, the terms “Federal agency” and “agency” mean any authority of the United States that is an “agency” (as defined in section 3502 of title 44, United States Code), other than an independent regulatory agency (as defined in that section). IIJA, § 70912(3).

<sup>5</sup> IIJA, § 70914(a).

“use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States.”<sup>6</sup>

On April 18, 2022, OMB issued Memorandum M-22-11, “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.” Memorandum M-22-11 provided initial implementation guidance to Federal agencies on the application of the Buy America preference to Federal financial assistance programs for infrastructure, the Buy America waiver process, and other topics.

On August 23, 2023, OMB issued a Notification of Final Guidance revising title 2 of the Code of Regulations (“CFR”) to add a new part 184 and revise section 200.322.<sup>7</sup> Part 184 provides guidance to Federal agencies on how to apply the “Buy America” preference set forth in BABA to Federal awards for infrastructure projects.<sup>8</sup> The revised section 200.322 clarifies existing provisions within part 200 on domestic preferences for procurements made under Federal financial assistance awards, and specifies that Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.<sup>9</sup> OMB issues this memorandum to provide Federal agencies with supplemental guidance on implementing BABA and 2 CFR part 184.

## **I. Rescission of OMB Memorandum M-22-11**

This memorandum rescinds and replaces OMB Memorandum M-22-11. OMB’s primary guidance related to implementation of BABA is contained in 2 CFR part 184. This memorandum summarizes certain aspects of 2 CFR part 184, and provides supplemental guidance for infrastructure projects subject to BABA. Federal agencies should refer to 2 CFR 184.2 for the effective date and applicability of part 184.<sup>10</sup>

## **II. Scope**

In 2 CFR part 184, OMB identifies a limited set of infrastructure projects that will remain subject to certain requirements established in Memorandum M-22-11. See 2 CFR 184.2(b)-(c). For such projects, refer to Appendix II for applicable requirements originally contained in Memorandum M-22-11.

This memorandum modifies the guidance in Section VII of OMB Memorandum M-22-11 on “Issuing Buy America Waivers” for all infrastructure projects, including both projects subject to part 184 of 2 CFR and projects subject to the requirements of the rescinded OMB Memorandum M-22-11. Thus, Section VI of this Memorandum, entitled “Issuing Buy America Waivers,” is the effective OMB guidance on waivers for all infrastructure projects subject to BABA.

## **III. Summary of 2 CFR part 184**

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<sup>6</sup> Exec. Order No. 14005 (see footnote 1).

<sup>7</sup> See 88 FR 57750 (Aug. 23, 2023).

<sup>8</sup> IIJA § 70912(a)(5)(7).

<sup>9</sup> See 88 FR 57750 (Aug. 23, 2023).

<sup>10</sup> 2 CFR 184.2(b).



2 CFR part 184 includes definitions for key terms, including iron or steel products, manufactured products, construction materials, and materials identified in section 70917(c) of BABA (section 70917(c) materials). These definitions at 2 CFR 184.3 provide a common system for Federal agencies to distinguish between the product categories established under the statutory text in BABA.

2 CFR 184.4(c)-(d) provides guidance on the meaning of infrastructure under BABA. Section 184.4(c) explains that “infrastructure” encompasses public infrastructure projects in the United States. The term includes, at a minimum, the structures, facilities, and equipment for 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; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

OMB also provides a definition of “infrastructure project” at 2 CFR 184.3. Section 184.4(d) explains that Federal agencies should interpret the term “infrastructure” broadly and consider the description provided in section 184.4(c) as illustrative and not exhaustive. Section 184.4(d) also explains that, when determining if a particular construction project of a type not listed in section 184.4(c) constitutes “infrastructure,” agencies should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Through this memorandum, OMB notes that projects with the former “public” qualities have greater indicia (or distinguishing features) of “infrastructure,” while projects with the latter “private” quality have fewer. As a result, projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute a public infrastructure project for purposes of BABA. Federal agencies are strongly encouraged to consult with OMB when making such determinations or if they are uncertain about the applicability of this guidance to any particular infrastructure program.

2 CFR part 184 also includes —

- Information on the applicability and effective date of part 184 (2 CFR 184.2);
- Information on the non-applicability of part 184 to certain existing Buy America preferences implemented by Federal agencies (2 CFR 184.2(a));
- Guidance on the applicability of the Buy America preference to infrastructure projects and including the preference in Federal awards (2 CFR 184.4(a)-(b));
- Guidance on categorizing articles, materials, and supplies into the appropriate category (2 CFR 184.4(e));
- Guidance on applying the Buy America preference by category (2 CFR 184.4(f));
- Guidance for determining the cost of components of manufactured products (2 CFR 184.5);
- Standards that define “all manufacturing processes” in the case of construction materials (2 CFR 184.6);

- Guidance on proposing and issuing Buy America waivers (2 CFR 184.7);
- Guidance on how Federal agencies should allow recipients to request waivers (2 CFR 184.7); and
- Guidance on exemptions to the Buy America preference (2 CFR 184.8).

#### **IV. Guidance on Applicability to Federal Financial Assistance Programs**

The Buy America preference under BABA and 2 CFR part 184 applies to all Federal financial assistance as defined in 2 CFR 200.1 or successor regulations<sup>11</sup> — whether or not funded through IJJA — where funds are appropriated or otherwise made available and used for a project for infrastructure. See 2 CFR 184.2(a), 200.1, and 200.322(c). For the purposes of this memorandum, 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, loan guarantees, and other types of financial assistance. The term “non-Federal entity” includes States, local governments, territories, Indian tribes, Institutions of Higher Education (IHE), and nonprofit organizations.<sup>12</sup>

For purposes of this guidance, for-profit organizations are not considered non-Federal entities. However, this guidance does not alter legal authorities that agencies may have to include the Buy America preference, or other domestic content requirements, in awards of Federal financial assistance issued to for-profit organizations. Federal agencies may consider applying this guidance to for-profit entities consistent with their legal authorities. For example, 2 CFR 200.101(a)(2) allows Federal agencies to apply certain subparts of part 200 to for-profit entities. See also the discussion of for-profit entities in the preamble for 2 CFR part 184; and discussion below in this memorandum on requirements that “flow down” to “subrecipients.”

A Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

A Buy America preference only applies to the iron and steel, manufactured products, and construction materials incorporated into an infrastructure project receiving a Federal award. If an agency has determined that no funds from a particular project receiving a Federal award will be used for infrastructure, a Buy America preference does not apply to that project. A Buy America preference does not apply to non-infrastructure components or expenditures under an infrastructure project receiving a Federal award.

A Buy America preference applies to *an entire infrastructure project*, even if it is funded by both Federal and non-Federal funds under one or more awards. In other words, if an

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<sup>11</sup> IJJA § 70912(4)(A)

<sup>12</sup> See 2 C.F.R. § 200.1.

infrastructure project receives a Federal award, the Buy America preferences applies to both the Federal funds and non-Federal funds used for the infrastructure project.

Part 184 clarifies that it does not apply to a Buy America preference meeting or exceeding the requirements of section 70914 of BABA applied by a Federal agency to Federal awards for infrastructure projects before November 15, 2021 (when IIIA was signed into law). Federal agencies must make necessary changes to come into compliance with BABA's requirements, unless such agencies have policies and provisions that already meet or exceed the standards required by BABA. For example, a program in which the standards for iron and steel already meet the standards in BABA may nevertheless be required to adopt new standards for manufactured products and construction materials. Maintaining current policies where appropriate avoids unnecessary disruption to programs, or elements of programs, that already meet or exceed BABA requirements. For additional information, see 2 CFR 184.2(a) and associated discussion of that section in the preamble to the final guidance.<sup>13</sup>

Unless the Federal award specifically indicates otherwise, subawards should conform to the terms and conditions of the Federal award from which they flow.<sup>14</sup> For example, if a Federal agency obligates an award to a State government as a direct recipient, and the State issues a subaward to a for-profit entity to carry out the project as a subrecipient, then the Buy America preference requirements included in the Federal award would flow down to the for-profit entity.

Through Memorandum M-22-11, OMB explained that, before applying a Buy America preference to a covered program that will affect Tribal communities, Federal agencies should follow the consultation policies established through Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and consistent with policies set forth in the Presidential Memorandum of January 26, 2021, on Tribal Consultation and Strengthening Nation-to-Nation Relationships. Federal agencies should continue to strengthen Nation-to-Nation relationships through regular and meaningful consultation and collaboration with Tribal communities in accordance with the Presidential Memorandum of January 26, 2021 and the Presidential Memorandum of November 30, 2022, on Uniform Standards for Tribal Consultation.

Agencies with questions regarding the application of a Buy America preference to agency programs, including questions about the possible use of waivers, are advised to reach out to OMB's Made in America Office ("MIAO") for technical assistance and advice.

## **V. Consistency with International Agreements**

Pursuant to Section 70914(e) of BABA, this guidance must be applied in a manner consistent with the obligations of the United States under international agreements. Federal financial assistance awards are generally not subject to international trade agreements because these international obligations only apply to direct Federal procurement activities by signatories to such agreements. The Federal Acquisition Regulation ("FAR") addresses how international trade agreements implemented by the Trade Agreements Act apply to direct Federal procurement activities of the U.S. at FAR subpart 25.4.<sup>15</sup> In the case of Federal financial assistance, a number of

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<sup>13</sup> 88 FR 57750 (Aug. 23, 2023).

<sup>14</sup> 2 CFR 200.101(b)(2).

<sup>15</sup> See also FAR 25.1101, 25.1103, and 52.225-5.

U.S. States have opted to obligate their procurement activities to the terms of one or more international trade agreements and, as such, are included in schedules to the international trade agreements. If a recipient is a State that has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement, a Federal agency that applies a BABA preference to Federal awards may propose to waive BABA requirements in the public interest to allow a State to comply with its obligations. Federal agencies should follow the procedures in Section 184.7 of the OMB guidance in 2 CFR part 184 and relevant supplemental guidance in this memorandum. For additional information, interested entities may also consult with the State in question or the Federal agency providing the funds.

## **VI. Issuing Buy America Waivers**

Pursuant to Section 70914(b) of BABA and 2 CFR 184.7, the head of a Federal agency may waive the application of a Buy America preference under an infrastructure program in any case in which the head of the Federal agency finds that —

- Applying the Buy America preference would be inconsistent with the public interest (a “public interest waiver”);
- Types of iron, steel, 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”); or
- The inclusion of iron, steel, 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”).

Federal agencies are responsible for processing and approving all waivers, including waivers requested by recipients and on behalf of subrecipients consistent with the procedures in 2 CFR 184.7. Every waiver must be reviewed by the MIAO. To the greatest extent practicable, waivers should be targeted to specific products and projects.<sup>16</sup>

Before issuing a final waiver, the Federal awarding agency must make the proposed waiver and the detailed written explanation publicly available in an easily accessible location on a website designated by the Federal awarding agency and OMB. The Federal agency must also provide a period of not less than 15 calendar days for public comment on the proposed waiver.<sup>17</sup> General applicability waivers are subject to a minimum 30-day public comment period when reviewed for modification or renewal.<sup>18</sup> The MIAO may request that Federal agencies use a 30-day comment period for other waivers on a case-by-case basis when circumstances warrant — for example when a waiver covers items of special importance to American supply chains (such as those identified in section 3(b) of the Executive Order 13953) or involves a substantial amount of Federal funding.

Agencies are required to provide the website address where they will be posting proposed waivers for public comment to OMB at [MBX.OMB.MadeInAmerica@omb.eop.gov](mailto:MBX.OMB.MadeInAmerica@omb.eop.gov). Pursuant to sections 70914(c) and 70937 of IIJA, the waiver must also be cross-posted to a

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<sup>16</sup> See Section VI of this guidance for information on waiver principles and criteria.

<sup>17</sup> 2 CFR part 184.7(d).

<sup>18</sup> IIJA § 70914(d)(2)(A)(ii). See Section VII of this guidance for information on general applicability waivers.

centralized waiver transparency website managed by the General Services Administration (GSA), [BuyAmerican.gov](https://BuyAmerican.gov),<sup>19</sup> in addition to the agency website. To minimize duplication and promote efficiency, MIAO and GSA will continue to coordinate with agencies on the expansion of the existing website's functionality to display waivers for Federal financial assistance and provide further instructions to agencies as necessary.

Federal agencies are responsible for performing due diligence, including market research, and approving or rejecting waivers consistent with BABA, 2 CFR part 184, this guidance, and any other applicable Buy America laws.

Federal agencies should notify the MIAO, and are encouraged to consult with the MIAO when possible, in advance of posting an award- or project-level proposed waiver for public comment. However, Federal agencies must consult with the MIAO for proposed waivers with broader applicability (such as a general applicability waiver) before posting them for public comment. The purpose of the consultation is to identify any opportunities to structure the waiver in order to maximize the use of goods, products, and materials produced in the United States to the greatest extent possible consistent with law. Federal agencies should send proposed waivers for review to [MBX.OMB.MIAwaivers@omb.eop.gov](mailto:MBX.OMB.MIAwaivers@omb.eop.gov).

Federal agencies must submit to the MIAO a draft of the waiver for review after the public comment period has concluded. MIAO will review the draft waiver to determine if it is consistent with applicable law and policy,<sup>20</sup> and will notify the Federal agency of its determination.

All waiver requests must include a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States<sup>21</sup> and a certification that there was a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, or nonproprietary communications with potential suppliers.<sup>22</sup> In addition, at a minimum and to the greatest extent practicable, each proposed or draft final waiver submitted to the MIAO should include the following information, as applicable:

- Waiver type (nonavailability, unreasonable cost, or public interest).
- Recipient name and Unique Entity Identifier (UEI).
- Federal awarding agency organizational information (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code).
- Financial assistance listing name and number.
- Federal financial assistance program name.
- Federal Award Identification Number (FAIN) (if available or applicable).
- Federal financial assistance funding amount.
- Total estimated infrastructure expenditures, including all Federal and non-Federal funds (if applicable).
- Infrastructure project description and location (to the extent known).

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<sup>19</sup> [BuyAmerican.gov](https://BuyAmerican.gov) redirects to [MadeInAmerica.gov](https://MadeInAmerica.gov).

<sup>20</sup> Executive Order 14005, § 4(c).

<sup>21</sup> IIJA, § 70937(c)(2)(A).

<sup>22</sup> IIJA, § 70937(c)(2)(D).

- In the case of general applicability waivers, a description of the relevant Federal program(s)—including information on the size and scale of the program(s), an estimate of the dollar amount of Federal financial assistance that would be subject to the waiver, and an estimate of how many infrastructure projects would be subject to the waiver.
- List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country(ies) of origin (if known), and relevant Product and Service Code (PSC) and North American Industry Classification System (NAICS) code for each.
- A description of efforts made (e.g., market research, industry outreach, etc.) by the Federal awarding agency and, in the case of a project or award specific waiver, by the recipient, in an attempt to avoid the need for a waiver. Such a description may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
- Market research, where applicable, should include relevant details, including who conducted the market research, when it was conducted, sources that were used, and the methods used to conduct the research.
- Anticipated impact if no waiver is issued.
- For final waivers, any relevant comments received through the public comment period, and the agency’s response to those comments.

The purpose of the information is to demonstrate the agency’s due diligence, and provide the MIAO with sufficient information to determine whether the proposed waiver is consistent with law and policy. For proposed waivers, agencies should also ensure that sufficient information is available for public review. Information provided for public review should help interested manufacturers gauge the demand for products for which agencies are considering waiving a Buy America preference.

To avoid a need for duplicative waiver requests from entities that receive funding for one infrastructure project through multiple Federal agencies, the Federal agency contributing the greatest amount of Federal funds for the project may be considered the Cognizant Agency for Made in America (“Cognizant Agency”) and may take responsibility for coordinating with the other Federal awarding agencies. Such coordination has the benefit of providing uniform waiver criteria and adjudication processes, minimizing duplicative efforts among Federal agencies, and reducing burdens on recipients. Based on the statutory waiver authority at section 70914(b) of BABA, each Federal agency waiving a BABA preference must make their own waiver determination. In other words, a Cognizant Agency cannot independently issue a waiver that applies to other agencies, but other agencies may rely on the work performed by the Cognizant Agency when proposing and issuing waivers for a single infrastructure project. When appropriate, agencies may consider proposing a joint waiver including two or more agencies relying on the work performed by the Cognizant Agency. Any Federal agency that did not jointly issue the proposed and final waivers will need an individual waiver, but it may also potentially rely on work performed by the Cognizant Agency when appropriate under the circumstances. The Cognizant Agency is responsible for consulting with the other Federal agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to the MIAO.

a. *Waiver Principles and Criteria*

To ensure they are scrupulously monitoring, enforcing, and complying with applicable Buy America Laws and minimizing the use of waivers,<sup>23</sup> agencies must apply consistent criteria to determine whether to grant a waiver in a given circumstance. Agencies should establish policies and practices to ensure consistency with this guidance.

Agencies may reject or grant waivers in whole or in part. To the greatest extent practicable, waivers should be issued at the project level and be product-specific. As appropriate, a project-level waiver may be further narrowed to apply only to a single product or product type on that project. Overly broad waivers undermine market signals designed to boost domestic supply chains, particularly for key articles, materials and supplies in critical supply chains (i.e., critical supply chains identified in Executive Order 14017, *America's Supply Chains*). When necessary, agencies may consider issuing a waiver that has applicability beyond a single project; however, agencies should always issue, construe, and apply waivers to ensure the maximum utilization of goods, products, and materials produced in the United States, consistent with applicable law.

Federal agencies may consult with the MIAO when establishing or modifying criteria for granting waivers. They may also work within the Made in America Council,<sup>24</sup> a practice that will help to foster consistency across agencies to the greatest extent practical and appropriate. Federal agencies should use the following principles before issuing a waiver of any type —

- **Time-limited:** In certain limited circumstances, a Federal agency may determine that a waiver should be constrained principally by a length of time, or phased-out over time, rather than by the specific projects to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” from domestic sources is widely used in projects funded by a particular program’s awards. When issuing such a waiver, the agency should identify an appropriate, definite time frame (e.g., no more than one to two years) designed to ensure that, as domestic supply becomes available, domestic producers will have prompt access to the market created by the program.
- **Targeted:** Waivers that are not limited to particular projects should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) necessary. Waivers that are overly broad will tend to undermine domestic preference policies. Broader waivers will receive greater scrutiny from the MIAO.
- **Conditional:** Federal agencies are encouraged to issue waivers with specific conditions that support the policies of BABA and the Executive Order.

These principles and criteria should be viewed as minimum requirements for the use of

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<sup>23</sup> IIJA § 70933(2).

<sup>24</sup> “Launching a New Made in America Council,” OMB, Briefing Room, Blogs (Jan. 19, 2022).

waivers by Federal agencies.<sup>25</sup> The MIAO expects all general applicability waivers to be appropriately targeted and time-limited. For example, agencies may consider phasing-out a waiver over time to provide a phased application of the Buy America preference requirements for a specific Federal program. Agencies also may consider limiting the scope of the waiver to only specific Buy America preference requirements (such as proposing to waive requirements for a limited set of construction materials). Project-level and award-level waivers should also be narrowly targeted, as appropriate.

Federal agencies should propose waivers to apply prospectively to future expenditures incurred after the effective date of the final waiver. While the BABA requirements apply when Federal funds are obligated<sup>26</sup> (when a Federal award is made), the MIAO recognizes that certain circumstances may justify a waiver of those domestic content requirements even after an award has been made. While waivers can be granted after a Federal agency makes an award, the waiver cannot apply to expenditures already incurred under the Federal award for items subject to a Buy America preference before the effective date of the waiver.

#### Non-availability Waivers

Before granting a non-availability waiver, agencies should consider whether the recipient has performed thorough market research, which may be accomplished with assistance from the agency, and adequately considered, where appropriate, qualifying alternate items, products, or materials. Waivers should describe the market research activities and methods to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources. Agencies are encouraged to engage with the Made in America Council to develop resource lists for common items, goods, or materials.

#### Unreasonable Cost Waivers

An unreasonable cost waiver is available if the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. Before granting an unreasonable cost waiver, to the extent permitted by law, agencies should ensure the recipient has provided adequate documentation that no domestic alternatives are available within this cost parameter. Agencies may assist recipients in gathering documentation.

For requests citing unreasonable cost as the statutory basis of the waiver, the waiver justification must include a comparison of the overall cost of the project with domestic products to the overall cost of the project with foreign-origin products, pursuant to the requirements of the applicable Made in America law.<sup>27</sup> Publicly available cost comparison data may be provided in lieu of proprietary pricing information.<sup>28</sup> Unreasonable cost waivers should be no broader than necessary.

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<sup>25</sup> See Section IV. of this guidance for agencies that have existing regulations or guidance.

<sup>26</sup> IIIA § 70914(a).

<sup>27</sup> IIIA, § 70937(c)(2)(B).

<sup>28</sup> IIIA, § 70937(c)(2)(B).



Before granting an unreasonable cost waiver, to the extent permitted by law, agencies should also assess whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products. More information on this topic is provided below in the discussion of public interest waivers.

### Public Interest Waivers

A waiver in the public interest may be appropriate where an agency determines that other important policy goals cannot be achieved consistent with the Buy America requirements established by BABA and the proposed waiver would not meet the requirements for a non-availability or unreasonable cost waiver. Such waivers must be used judiciously and construed to ensure the maximum utilization of goods, products, and materials produced in the United States.<sup>29</sup> To the extent permitted by law, determination of public interest waivers must be made by the head of the agency with the authority over the Federal financial assistance award.<sup>30</sup>

Public interest waivers may have a variety of bases. As with other waivers, they should be project-specific whenever possible, as what is in the public interest may vary depending upon the circumstances of the project, recipient, and specific items, products, or materials in question.

Federal agencies may wish to consider issuing a limited number of general applicability public interest waivers in the interest of efficiency and to ease burdens for recipients. The agency remains responsible for determining whether such a waiver is appropriate to apply to any given project; the MIAO will not review each application of such a waiver. The following are examples of types of public interest waivers an agency may consider proposing and issuing<sup>31</sup> —

- ***De Minimis***: Ease of administration is important to reduce burden for recipients and agencies. Federal agencies may consider whether a general applicability public interest waiver should apply to infrastructure project purchases below a *de minimis* threshold. An agency may consider whether a public interest waiver should apply when necessary to ensure that recipients and Federal agencies make efficient use of limited resources, especially if the cost of processing the individualized waiver(s) would risk exceeding the value of the items waived. Agencies may consider adopting an agency-wide public interest waiver that sets a *de minimis* threshold, for example, of five (5) percent of applicable project costs up to a maximum of \$1,000,000, where applicable project costs are defined as material costs subject to the Buy America preference.
- **Small Grants**: Agencies may wish to consider whether it is in the public interest to waive application of a Buy America preference to awards at or below the Simplified Acquisition Threshold (SAT) that meet the following criteria: (1) the total Federal award does not exceed the SAT, currently set at \$250,000; and (2) the Federal award amount, inclusive of other funding sources for the infrastructure

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<sup>29</sup> IIJA, § 70935(a).

<sup>30</sup> IIJA, § 70935(b).

<sup>31</sup> The list is not exhaustive and no agency is required to issue the types of waivers noted as examples. As with other general applicability waivers, generally applicable public interest waivers must be reviewed at least every five years and more often as appropriate.

project, is not anticipated to exceed the SAT for the life of the Federal award. Federal agencies and the MIAO have found this type of waiver to be consistent with policy in some cases in the initial years after enactment of IJJA, but it may potentially be phased out over time as agencies develop more efficient award-level or project-level waiver review capabilities.

- **Minor Components:** Agencies may wish to consider whether it is in the public interest to allow minor deviations for miscellaneous minor components within iron and steel products. A general applicability, public interest, minor components waiver may allow non-domestically produced miscellaneous minor components comprising no more than five (5) percent of the total material cost of an otherwise domestically produced iron and steel product. This waiver type may not exempt an entire iron and steel product from the Buy America preference; the primary iron and steel components of the product must still be produced domestically. It would not be in the public interest to use a minor components waiver to exempt a whole product from the iron and steel requirements, or to allow the primary iron or steel components of the product to be produced other than domestically.
- **International Trade Obligations:** If a recipient is a State that has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement, a waiver of a Made in America condition to ensure compliance with such obligations may be in the public interest.
- **Other Considerations:** A waiver may be in the public interest in one circumstance, but not in another, and considerations will depend upon the nature and amount of resources available to the recipient, the value of the items, goods, or materials in question, the potential domestic economic impacts, and other policy considerations, including sustainability, equity, accessibility, performance standards, and the domestic content (if any) of and conditions under which the non-qualifying good was produced.

All proposed waivers citing the public interest as the statutory basis must include a detailed written statement, which must address all appropriate factors, such as potential obligations under international agreements, justifying why the requested waiver is in the public interest.<sup>32</sup>

Before granting a waiver in the public interest, to the extent permitted by law, agencies must assess whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products. As explained above, Federal agencies should also conduct a similar analysis for unreasonable cost waivers, but it is not needed for non-availability waivers. Agencies may consult with the International Trade Administration (ITA) in making this assessment if the granting agency deems such consultation to be helpful. The agency must integrate any findings from the assessment into its waiver determination as appropriate.<sup>33</sup> MIAO will work with ITA and agencies to develop standard processes to expedite this required assessment, such as by ensuring agencies know how to easily access lists of dumped or injuriously subsidized products. Agencies can contact the MIAO for more information on possible resources.

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<sup>32</sup> IJJA, § 70937(c)(2)(C).

<sup>33</sup> Executive Order, § 5.

*b. General Applicability Waivers*

The term “general applicability waiver” refers to a waiver that applies generally across multiple agency projects or awards. A general applicability waiver can be “product-specific” (e.g., applies only to a product or category of products) or “non-product specific” (e.g., applies to all “manufactured products”).

General applicability waivers should be issued only when necessary to advance an agency’s missions and goals, consistent with IIJA, the Executive Order, and this guidance. For example, an agency might issue a general applicability waiver for a product for which there are well-established domestic sourcing challenges. General applicability waivers will require appropriate justification from the Federal agency.

Except as provided below, Federal agencies must review general applicability waivers within five years of the date on which the waiver was issued. Agencies are encouraged to review general applicability waivers more frequently, when appropriate. In reviewing of any general applicability waiver, the head of a Federal agency, or their delegated authority, must —

- (A) Publish in the *Federal Register* a notice that—
  - (i) describes the justification for the general applicability waiver; and
  - (ii) requests public comments for a period of not less than 30 days on the continued need for the general applicability waiver; and
- (B) Publish in the *Federal Register* a determination on whether to continue or discontinue the general applicability waiver, considering the comments received in response to the notice published under paragraph (A).<sup>34</sup>

Through November 15, 2026, the requirement to review general applicability waivers under paragraphs (A) and (B) above does not apply to any product-specific general applicability waiver that was issued before May 19, 2021.<sup>35</sup>

OMB has instructed Federal agencies with existing, non-product specific general applicability waivers that were issued more than five years before November 15, 2021 to promptly commence review of each such waiver by publishing a *Federal Register* notice as required in section 70914(d)(2)(A) of the IIJA. Should the review justify retaining the waiver, agencies should consider narrowing the waiver in a manner that would support supply chain resilience and boost incentives to manufacture key products domestically, as appropriate.

The MIAO will work with agencies to expedite consideration of general applicability waivers for products or categories of products for which domestic sourcing challenges have been well documented. Agencies should align such waivers with complementary policies, such as work to boost supply chain resiliency and domestic employment. General applicability waivers should include appropriate expiration dates designed to ensure that, once available, Buy America

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<sup>34</sup> IIJA, § 70914(d)(1) & (2).

<sup>35</sup> IIJA, § 70914(d)(3).

qualifying products receive appropriate consideration.

**Appendix I: Example of Award Term (Sample Language) —Required Use of American Iron, Steel, Manufactured Products, and Construction Materials**

Where applicable, the Federal agency must include appropriate terms and conditions in all awards, in accordance with applicable legal requirements and its established procedures, in order to effectuate the requirements of BABA and this guidance. The following is sample language.

To achieve the greatest possible consistency across agencies and programs, agencies should send their proposed terms and conditions to the MIAO for review prior to incorporating them into applicable awards. Agencies should include appropriate language in the Notice of Funding Opportunity to provide applicants fair notice of the Buy America conditions that will apply to funds obligated on or after that date.

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*Buy America Preference.* Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless:

- (1) All iron and steel used in the project are 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 the project are 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, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
- (3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below.

*Incorporation into an infrastructure project.* The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

*Categorization of articles, materials, and supplies.* An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii)

Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

*Application of the Buy America Preference by category.* An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

*Determining the cost of components for manufactured products.* In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

(a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

*Construction material standards.* The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

(1) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

(2) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

(3) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

(4) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

(5) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

(6) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

(7) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

(8) Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

### *Waivers*

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the Buy America Preference in any case in which the agency determines that:

- (1) applying the Buy America Preference would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the Buy America Preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [link to awarding agency web site with information on currently applicable general applicability waivers].

*Definitions*<sup>36</sup>

**“Buy America Preference”** means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

**“Construction materials”** means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

- (i) Non-ferrous metals;
- (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- (iii) Glass (including optic glass);
- (iv) Fiber optic cable (including drop cable);
- (v) Optical fiber;
- (vi) Lumber;
- (vii) Engineered wood; and
- (viii) Drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

**“Infrastructure”** means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for 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; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

**“Infrastructure project”** means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR 184.4.

**“Iron or steel products”** means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

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<sup>36</sup> Federal agencies may choose to provide definitions on a public-facing website and reference that website in the terms and conditions, rather than including all definitions in the terms and conditions itself. If an agency chooses to provide definitions on a public-facing website, it is not considered a deviation from the terms and conditions provided and does not need to be reviewed by OMB.



**“Manufactured products”** means:

(1) Articles, materials, or supplies that have been:

- (i) Processed into a specific form and shape; or
- (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

(2) If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

**“Predominantly of iron or steel or a combination of both”** means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

**“Section 70917(c) materials”** means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See Section 70917(c) of the Build America, Buy America Act.

**Appendix II: Guidance for Projects Identified at 2 CFR 184.2(b)-(c) as Remaining Subject to OMB Memorandum M-22-11**

In 2 CFR part 184, OMB identifies a limited set of infrastructure projects that will remain subject to certain requirements established in Memorandum M-22-11. For projects identified at 2 CFR 184.2(b)-(c) as remaining subject to the requirements of Memorandum M-22-11, recipients and subrecipients may continue to rely on —

- a. The requirements established in Section VIII of the rescinded Memorandum M-22-11 on “Preliminary Guidance for Construction Materials,” which is included, in relevant part, in this appendix. This includes reliance on the shorter list of construction materials identified in Memorandum M-22-11 and the preliminary standard for “all manufacturing processes” applicable to construction materials on that list; and
- b. Their good faith efforts to categorize articles, materials, and supplies as (1) iron or steel products, (2) manufactured products, or (3) construction materials based on the guidance provided in Sections I, VI, and VIII of the rescinded OMB Memorandum M-22-11. In other words, recipients and subrecipients of Federal awards for these projects are not required to recategorize items based on the more specific guidance provided in 2 CFR part 184 and the associated preamble, but may rely on clarifying guidance in part 184 or the associated preamble if useful.

Below is relevant guidance for these projects restated from OMB Memorandum M-22-11 —

The IJA finds that “construction materials” includes an article, material, or supply — other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives — 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; or
- drywall.

To provide clarity to item, product, and material manufacturers and processors, items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

Absent any existing applicable standard in law or regulation that meets or exceeds these preliminary standards, agencies should consider “all manufacturing processes” for construction materials to include at least the final manufacturing process and the immediately preceding manufacturing stage for the

construction material.