

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

MATERIALS PROCEDURE

WVDOH BUY AMERICA ACCEPTANCE GUIDELINES

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 Sections 2.2, 2.3 and 2.4 of this document.
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2. REFERENCED DOCUMENTS

- 2.1 WVDOH Standard Specifications, Current Edition.
- 2.2 23 U.S.C. 313 and 23 CFR 635.410 “Buy America Requirements.”
- 2.3 Chapter 5, Article 19 and Chapter 5A, Article 3, Section 56 of the West Virginia Code, entitled “West Virginia American Steel Act of 2001.”
- 2.4 Build America, Buy America Act, Section 70914.
- 2.5 Office of Management and Budget (OMB) Memorandum M-22-11, dated April 18, 2022.
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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
- 3.2 Unless there is an approved exception as outlined in this MP, all applicable materials on construction projects shall conform to the requirements of Section 106.1 of the WVDOH Standard Specifications.
- 3.3 Buy America Requirements only apply to articles, materials, and supplies that are permanently incorporated into the project. It does not apply to materials brought to the construction site, and removed at, or before the completion of the infrastructure project, such as tools, equipment, temporary scaffolding, or traffic control devices.
- 3.4 For the purpose of complying with Buy America Requirements, a material or product should only be classified into one of the three categories listed in Section 3.1.
- 3.5 Steel and Iron.

- 3.5.1 Pursuant to Buy America Requirements, all manufacturing processes for steel and iron materials must take place in the United States. This includes all processes from the initial melting stage through application of coatings.
- 3.6 Manufactured Products.
 - 3.6.1 Pursuant to Buy America Requirements, all Manufactured Products must be produced in the United States, and the cost of the components of the Manufactured Product that are mined, produced, or manufactured in the United States shall be greater than 55 percent of the total cost of all components of the Manufactured Product.
 - 3.6.2 The Federal Highway Administration (FHWA) has a longstanding waiver in effect exempting Manufactured Products from Buy America Requirements.
- 3.7 Construction Materials.
 - 3.7.1 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.
 - 3.7.2 Construction Materials includes any article, material, or supply that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including PVC, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall.
 - 3.7.3 Construction Materials does not include items of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregate such as stone, sand, or gravel; or aggregate binding agents or additives.
 - 3.7.4 Items that consist of two or more of the listed Construction Materials that have been combined together through a manufacturing process shall be treated as a Manufactured Product.
 - 3.7.5 Items that consist of at least one of the listed Construction Materials that have been combined together through a manufacturing process with another material that is not listed shall be treated as a Manufactured Product.
- 3.8 Buy America Certification.
 - 3.8.1 When Buy America Requirements apply, the Contractor shall furnish a notarized Certificate of Compliance signed by a company 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.
 - 3.8.2 The Division shall not authorize or make any payments to any Contractor not fully compliant with this requirement. Any payment made to any Contractor who did not fully comply with this requirement shall be recovered by the Division.
 - 3.8.3 The notarized Certificate of Compliance shall contain the following information:
 - 3.8.3.1 Title: Buy America Certification of Compliance.
 - 3.8.3.2 The Name, Address and Contact Information for the Company.

- 3.8.3.3 The Name of the Customer.
- 3.8.3.4 The shipping date of the material.
- 3.8.3.5 A company statement that demonstrates compliance with Buy America Requirements.
- 3.8.3.6 The statement: “In the event where a supplied material does not meet applicable Buy America Requirements, any payments made for the associated material shall be returned to the Division.”
- 3.8.3.7 The Contract ID for the Material (if applicable).
- 3.8.3.8 Both the Federal and State Project Number for the Material (if applicable).
- 3.8.3.9 The name of the material and/or material code reference in the Certificate of Compliance. This material name shall be a clear, common name of the material that is comparable to the AWP Material Name. Part Numbers, etc., may also be on the document if the company wishes.
- 3.8.3.10 The Line Item for the Material (if applicable).
- 3.8.3.11 The Quantity of the Material Shipped.
- 3.8.3.12 Signature of the Company Official and date.
- 3.8.3.13 The document must be notarized.
- 3.8.4 Attachment 1 shows a sample Certificate of Compliance.
- 3.8.5 The project shall file this Certificate of Compliance in each respective Line-Item Folder in ProjectWise (or the current Division utilized document retention software) for the project.
- 3.8.6 Multiple items may be listed on the Certificate of Compliance, though all the information for each line must be on the document.

4. BUY AMERICA MINIMAL USE EXCEPTIONS

- 4.1 Steel and Iron Materials.
 - 4.1.1 As provided for in 23 CFR 635.410(b)(4), an exception from Federal Buy America requirements exists for the minimal use of steel and iron materials “if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. For the purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.”
 - 4.1.2 Authority for determining applicability and issuance of a minimal use exception for steel and iron materials has been delegated to the West Virginia Department of

Transportation through its Stewardship and Oversight Agreement with the FHWA West Virginia Division Office.

- 4.1.3 Procedure for granting a minimal use exception from Federal Buy America requirements for the minimal use of steel and iron materials.
 - 4.1.3.1 The Contractor shall submit a letter to the District Construction Engineer requesting a minimal use exception for the use of foreign steel or iron materials. The letter shall demonstrate that the cost of the foreign steel or iron materials to be incorporated into the project do not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. Attached to the letter shall be documentation (e.g., invoices) which demonstrates that the cost of the foreign steel or iron materials requested to be used is the cost of the materials as they are delivered to the project.
 - 4.1.3.2 If the District Construction Engineer determines a minimal use exception is applicable and appropriate, they will respond to the Contractor via letter granting a minimal use exception.
 - 4.1.3.3 All documentation related to the granting of a minimal use exception shall be maintained in the project files.
- 4.2 Steel Products.
 - 4.2.1 As provided for in Chapter 5A, Article 3 Section 56 of the West Virginia Code, an exception from West Virginia domestic steel preference requirements exists for the minimal use of foreign steel products, when authorized in writing by the director of Purchasing Division, if “The cost for each contract item used does not exceed one tenth of one percent of the total contract cost or \$2,500, whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project.”
 - 4.2.2 Procedure for granting a minimal use exception from West Virginia domestic steel requirements.
 - 4.2.2.1 The Contractor shall submit a letter to the District Construction Engineer requesting a minimal use exception for the use of foreign steel products. The letter shall demonstrate that the cost of the foreign steel products to be incorporated into the project do not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. Attached to the letter shall be documentation (e.g., invoices) which demonstrates that the cost of the foreign steel products requested to be used is the cost of the materials as they are delivered to the project.
 - 4.2.2.2 If the District Construction Engineer determines a minimal use exception is applicable and appropriate, they will draft a letter to the director of Purchasing Division requesting the minimal use exception. The letter shall demonstrate that the cost of the foreign steel products to be incorporated into the project do not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. Attached to the letter shall be documentation (e.g., invoices) which demonstrates that the cost of the foreign steel products requested to be used is the cost of the materials as they are delivered to the project.

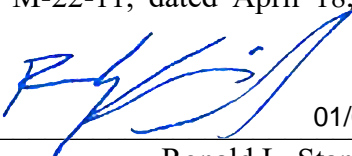
- 4.2.2.3 If approved by the director of Purchasing Division, the District Construction Engineer will respond to the Contractor via letter granting a minimal use exception.
- 4.2.2.4 All documentation related to the granting of a minimal use exception shall be maintained in the project files.
- 4.3 Construction Materials.
- 4.3.1 There are currently no minimal use exceptions for Federal Buy America Requirements for Construction Materials.

5. BUY AMERICA WAIVERS

- 5.1 Steel and Iron Materials.
- 5.1.1 As provided for in 23 CFR 635.410(c)(1), WVDOH may request a waiver from Federal Buy America requirements for steel and iron materials if: (1) the application of Buy America requirements would be inconsistent with the public interest; or (2) steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.
- 5.1.2 A request for a Buy America waiver, accompanied by supporting information, must be submitted in writing to the FHWA West Virginia Division Administrator for consideration.

6. BUY AMERICA MATERIALS

- 6.1 Attachment 1 includes a sample Certificate of Compliance
- 6.2 Attachment 2 includes a list of materials and products used in WVDOH construction projects and the applicability of Buy America Requirements.
- 6.2.1 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.
- 6.2.2 Attachment 3 includes OMB Memorandum M-22-11, dated April 18, 2022, for additional guidance.


01/04/2023

Ronald L. Stanevich, P.E.
Director
Materials Control, Soils & Testing Division

MP 106.10.50 Steward – Materials Control Section
RLS:Bs

ATTACHMENTS

This attachment has been superseded on 11/15/2023

Please see webpage for the updated Attachment:

<https://transportation.wv.gov/highways/mcst/Pages/MP-100s.aspx>

Buy America Certification of Compliance

Acme Manufacturing Company
123 Main Street
Charleston, WV 25302

Customer
Stark Construction Company
413 Kanawha Boulevard
Charleston, WV 25305

Ship Date: 10/31/2022

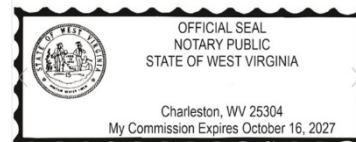
The below listed materials and products meets all the requirements of all Federal and State Laws for Buy America, including but not limited to: Chapter 5, Article 19 and Chapter 5A, Article 3 Section 56 of the West Virginia Code; 23 U.S.C. 313 Buy America, 23 CFR 635.410 Buy America Requirements, and Build America, Buy America Act, Section 70914. In the event where a supplied material does not meet applicable Buy America Requirements, any payments made for the associated materials shall be returned to the Division.

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 526.003.004 - Widget, Part Qi 500 Cubits
Line: 0025 596.003.004 - Widget, Part Hr 300 Cubits

Jonathan Doe, Quality Assurance Manager



DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	CoC Required	Notes
206.003.003.X	Base Reinforcement, Geogrid, Type 1,2	Yes	
211.004.000	Unclassified, Borrow Excavation	No	
211.005.000	Rock Borrow Excavation	No	
212.002.000	Select Material for Backfill	No	
218.003.003	Riprap, Grouted	No	
218.003.006	Slope Protection, Concrete	No	
219.003.000.0X	CLSM -Type A,B,C - Controlled Low Strength Material	No	
311.002.000.X	Free Draining Base Course, Open Graded - Asphalt/Cement	No	
401.002.00X	Asphalt Mix, All Types	No	
405.002.001.X	Type A,B,C - Chip Seal Aggregate	No	
406.PSP.000	High Friction Surface Treatment	Yes	
412.002.001	Bituminous Patching Winter Grade	No	
420.001.001	Asphalt, Micro Surfacing	No	
420.002.002.X	Aggregate, 2,3FA, Fine, Micro-Surfacing	No	
494.PSP.001	Asphalt, Cold In-Place Recycled	No	
501.003.001.0X	Concrete, Pavement, All Types	Yes	*1
514.003.000	Concrete, Roller Compacted	Yes	*1
601.003.00X.0X	Concrete, All Classes	No	
601.008.009	Stay-in-Place Fabricated Metal Forms	Yes	
601.PSP.001	Polymer, Fiberglass Reinforced (FRP)	Yes	
601.PSP.002	Epoxy Resign Injection System	Yes	
601.PSP.003	Epoxy Bonding Compound	Yes	
602.002.000.3	Reinforcing Bars, Uncoated Corrosion Resistant Rebar	Yes	
602.007.003	Reinforcing Bars, Splice Connector	Yes	
603.002.000.0X	Concrete Members (All Precast/Prestressed)	Yes	*1
603.006.002.2	Concrete, Class S-P, Self Consolidating	No	
603.PSP.001	Post Tension Rod, Steel	Yes	
604.002.000	Concrete for Pipe Culvert	No	
604.PSP.001	Pipe, Polyethylene Liner	Yes	
605.002.000	ConcreteManholes & Inlets (Precast)	No	
605.002.000.01	Steel, Welded Grates for Inlets	Yes	
605.002.000.0X	Manhole, All Types	Yes	*1
605.002.000.0X	Inlet, All Types	Yes	*1
605.002.000.14	Slot Inlet Riser, Perforated	Yes	
605.002.000.16	Lift Station & Valve Vault	Yes	
607.002.000.01	End Terminal, Flared or Tangent Steel	Yes	
607.002.000.02	Blockout, Polymer	Yes	
607.002.000.03	Blockout, Non Plastic	Yes	
607.PSP.000	High Tension Cable Barrier	Yes	
607.PSP.001	Cable End Terminal	Yes	
609.002.000	Concrete, Sidewalk	Yes	*1
609.002.001	Detectable Warning Surface	Yes	
610.002.000	Asphalt Curb	No	
612.002.001.X	Tunnel Liner, Steel Plate Pipe, 2/4 Flange	Yes	

DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	CoC Required	Notes
614.007.000	Lagging, Concrete	No	
615.000.000.01	Steel Superstructure, Truss/Arch	Yes	
615.000.000.02	Steel Superstructure	Yes	
615.000.000.03	Expansion Dam, Steel, Tooth Type	Yes	
615.000.000.04	Expansion Dam, Steel, Strip Seal Type	Yes	
615.000.000.05	Expansion Dam, Steel, Modular Type	Yes	
615.000.000.06	Bearing Assemblies, Steel	Yes	
615.000.000.07	Steel Girders	Yes	
615.000.000.08	Steel Crossframes	Yes	
615.000.000.09	Steel Diaphragms	Yes	
615.003.003	Shear Stud Connector, Steel	Yes	
616.009.000	Piles, Concrete (Precast)	No	
617.004.000	Pipe Railing, Steel	Yes	
617.005.000	Railing, Steel, Ferrous Metal	Yes	
617.006.000	Railing, Aluminum, Pedestrian	Yes	
620.000.000.01	Culvert, Concrete, Reinforced, Cast In Place, All Types	Yes	*1
620.000.000.02	Culvert, Concrete, Three-Sided Structure (Precast)	Yes	*1
620.000.000.03	Culvert, Concrete, Arch-Topped, (Precast)	Yes	*1
620.000.000.04	Culvert, Concrete, Flat-Topped, (Precast)	Yes	*1
620.000.000.05	Culvert, Concrete, Reinforced, Two Piece, (Precast)	Yes	*1
621.002.001	Flooring Steel Grid, Open Type	Yes	
621.002.002	Flooring, Steel Grid, Filled	Yes	
622.001.000	Timber Bridges	Yes	
623.002.000	Shotcrete, Monofilament Polypropylene Fibers for Pneumatically App	Yes	
625.004.003	Steel, Casing Pipe for Drilled Caissons	Yes	
625.004.004	CSL (Crosshole Sonic Logging) Testing Tubes for Caissons	Yes	
626.004.003	Retaining Wall, Cast In Place	Yes	*1
626.005.001	Retaining Wall (Precast)	Yes	*1
626.005.001.01	Retaining Wall, MSE, Wall Panels	Yes	*1
626.005.001.02	Retaining Wall, MSE Modular Block	Yes	*1
626.005.001.03	Retaining Wall, MSE Wire Face	Yes	*1
626.005.001.123	Modular Block Sealant	Yes	
626.006.001.3	Retaining Wall, Granular Backfill	Yes	*1
626.006.002	Retaining Wall, Concrete, Cast in Place	Yes	*1
627.PSP.001	Expansion Joint, Foam	No	
631.002.000	Electrical, Miscellaneous	Yes	
632.002.001	Horizontal Drain	Yes	
633.002.000	Gutter, Invert Pipe	Yes	
633.004.000	Gutter, Concrete	No	
633.006.000	Gutter, Dumped Rock	No	
634.002.000	Cribbing, Concrete	Yes	*1
636.002.001.01	Traffic Control Devices	No	
636.002.001.02	Warning Lights	No	
636.002.001.03	Traffic Cones	No	

DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	CoC Required	Notes
636.004.000	Dust Palliatives	No	
638.002.000	Survey Marker	Yes	
638.006.000	Outlet Marker	Yes	
642.006.000	Compost Filter Sock	Yes	
645.001.001	Elasticized Expanded Polystyrene - E-EPS	Yes	
645.001.003	Impervious Membrane	Yes	
645.002.001	Soil Reinforcement, Geosynthetic	Yes	
645.002.002	Backfill Material	No	
651.002.000	Topsoil	No	
657.002.001	Supports, Beams	Yes	
657.002.006	Supports, Pipe, Steel	Yes	
657.002.008	Support, Sign, Steel, Anchor Bolt, Roadway	Yes	
657.002.010	Supports, Tubular, Steel	Yes	
657.002.011.1	Supports, Steel, Channel Bar (U Channel)	Yes	
657.002.011.2	Supports, Steel, Breakaway Splice Devices	Yes	
658.002.000	Sign Support, Steel, Overhead	Yes	
658.002.007	Sign Support, Steel, Anchor Bolt O-H	Yes	
661.002.001.1	Signs, Aluminum, Flat Sheet Finished	Yes	
661.002.001.2	Signs, Aluminum, Extruded Panel Finished	Yes	
661.002.001.3	Sign Hardware	Yes	
661.002.015	Delineators, XS1 Bicycle Rail	Yes	
662.002.007.1	Luminaires, Roadway, Area, Underpass, Sign Light	Yes	
662.002.007.2	Signs, Internally Illuminated LED	Yes	
662.002.013.1	Pole, Steel, Lighting Support	Yes	
662.002.013.1.6	Lighting Support, Steel, Anchor Bolt	Yes	
662.002.013.2	Lighting Support, Steel, High Mast Type	Yes	
662.002.013.4	Luminaire Support Arm, Steel, Type 1 & 2	Yes	
662.002.013.5	Luminaire Support Arm, Steel, Type 3	Yes	
662.002.013.6	Lighting Pole, Aluminum	Yes	
662.002.013.7	Luminaire Support Arm, Aluminum	Yes	
662.002.014	Navigation Lighting System	Yes	
667.PSP.000	LED Dynamic Message Sign	Yes	
679.002.002.1	Concrete, Latex Modified	Yes	
679.002.002.2	Concrete, Microsilica	No	
688.005.004	Soluble Salt Removers	No	
689.000.000	Metalizing, Steel Coating	Yes	
690.001.002	Powder Coating of New Galvanized Steel For Signing and Lighting S	Yes	
701.001.000.X	Cement, Portland, All Types	No	
701.001.000.7	Cement, Type UHR	No	
701.001.000.8	Cement, Portland, Type 1 Low - Alkali	No	
701.003.000	Cement, Type 1L - Blended Hydraulic	No	
701.004.000	Cement, Masonry	No	
704.00X.00X.0X	Aggregate - All Types/Classes	No	
705.004.000.0X	Asphalt, Emulsion, All Types	No	

DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	CoC Required	Notes
705.005.000.0X	Asphalt, Liquid, All Types	No	
705.007.000	Asphalt, Dampproofing and Water-Proofing	No	
705.008.000	Asphalt, Dampproofing and Water-Proofing, Primer	No	
705.011.000.0X	Asphalt, Liquid, All Types	No	
707.001.001	Type M Admixture, Concrete, Air-Entraining	No	
707.002.002.01.1	Type D Admixture, Concrete Water-Reducing And Retarding	No	
707.002.002.01.2	Type G Admixture, Concrete Water-Reducing And Retarding,	No	
707.002.002.01.3	Admixture, Citric Acid (Retarder)	No	
707.003.001.1	Type A Admixture, Concrete, Water-Reducing	No	
707.003.001.2	Type F Admixture, Concrete, Water-Reducing	No	
707.004.001	Fly Ash - SCM, Supplementary Cementitious Material	No	
707.004.002	Slag Cement - SCM, Supplementary Cementitious Material	No	
707.004.003	Silica Fume - SCM, Supplementary Cementitious Material	No	
707.004.004	Natural - SCM, Supplementary Cementitious Material	No	
707.005.000	Admixture, Latex	Yes	
707.006.000	Burlap, Polyethylene Coated	No	
707.007.000	Burlap, Jute or Kenaf	No	
707.008.000	Curing, Concrete, Waterproof Paper	Yes	
707.009.000	Curing, Concrete, Liquid Membrane Compound	Yes	
707.010.000	Curing, Concrete, White Poly Sheeting, F	Yes	
707.011.000	Coating, Epoxy Resin Protection, Type 3, Grades 1 or 2, Class B or C	Yes	
707.012.002	Sealer, Concrete	Yes	
707.013.001	Type C Admixture, Concrete, Accelerating	No	
707.014.001	Admixture, Concrete, Water-Reducing & Accelerating, Type E	No	
707.015.001	Type D - Admixture, Concrete, Hydration Control Stabilizing	No	
707.016.001	Coating Materials, Concrete Protection	Yes	
707.017.001	Type S Admixture, Concrete, Specialized	No	
707.018.001	Admixture, Concrete, Foaming Agent	No	
708.001.001	Expansion Joint, Cork	No	
708.001.002	Expansion Joint, Bituminous Fiber	No	
708.002.001	Joint Seals, Preformed Elastomeric, Neoprene	Yes	
708.002.002	Expansion Joint, Sponge Rubber	No	
708.003.000	Joint Sealant, Hot-Poured for Concrete and Asphalt Pavements	Yes	
708.004.001.X	Sealant, Silicone Joint, All Types	Yes	
708.004.002	Joint, Back-up Material	No	
708.009.000	Bitumen Sealant, Concrete and Masonary	No	
708.010.001	Waterstops (Elastomer Material), Polyvinylchloride	Yes	
708.010.002	Waterstops (Elastomer Material), Rubber	Yes	
708.PSP.001	Neoprene Sheet for Semi-Integral Abutments	No	
709.000.000	Steel, Miscellaneous	Yes	
709.000.000.0	Welding Electrodes, Piles	Yes	
709.001.000.1	Reinforcing Bar, Steel Rebar	Yes	
709.001.000.2	Reinforcing Bar, Steel, Epoxy Coated, Coaters Rebar	Yes	
709.001.000.3	Epoxy Powders for Rebar	Yes	

DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	CoC Required	Notes
709.002.000.1	Reinforcement, 7-Wire Strand, Prestressing	Yes	
709.002.000.2	Reinforcement, Steel Bar, High Strength, Prestressing	Yes	
709.003.000	Bolt, Steel, Wire Mesh, Hook, Expansion	Yes	
709.004.000.1	Wire, Steel, Reinforcement	Yes	
709.004.000.2	Welded Wire, Steel, Reinforcement	Yes	
709.005.000	Pavement Reinforcement, Expanded Metal	Yes	
709.006.000	Bar or Rod Mats, Steel, Fabricated	Yes	
709.007.000	Bolt, Joint Tie Bolt Assembly, (J-Hook)	Yes	
709.008.000	Structural Metal, Steel, High Strength Low Alloy	Yes	
709.010.000.1	Gray Iron Castings	Yes	
709.010.000.2	Iron Castings, Ductile Iron Castings	Yes	
709.012.000.1	Structural and Eyebar, Steel, (Piling)	Yes	
709.012.000.2	Lagging, Steel	Yes	
709.015.000	Dowel Bars and Dowel Baskets, Assemblies, Coated	Yes	
709.017.000	Pipe, Steel, Welded & Seamless	Yes	
709.018.002	Copper Alloy Castings for Name Plates For Bridges	Yes	
709.021.000	Pipe, Steel, Floor Drains & Down-Spouts	Yes	
709.024.002	Bolt, Steel, High Strength A325 / A449	Yes	
709.024.003	Nut, Steel, High Strength	Yes	
709.024.004	Washer, Steel, High Strength	Yes	
709.036.000	Aluminum Alloy, Bolts, Nuts, and Set Screws	Yes	
709.037.000	Aluminum Alloy, Washers	Yes	
709.042.000	Steel, Galvanized Pipe or Tubing for Horizontal Drains	Yes	
709.045.000	Guardrail Posts, Galvanized Steel	Yes	
709.046.000	Post, Braces & Grate Frames, Fence, Steel	Yes	
709.046.000.1	Post, Studded Tee	Yes	
709.050.000	Pile Points, Steel (Piling)	Yes	
709.051.000	Sign Support Surface Mount Bracket, Breakaway Device	Yes	
709.052.000	Sign Support, Omni-Directional Breakaway Device, Steel Beam,	Yes	
709.053.000	Supports, Steel, Tubular	Yes	
709.054.000	Sign Support Back to Back U-Channel, Breakaway Device	Yes	
709.055.000	Sign Support Bracket - Barrier Wall	Yes	
710.002.001	Softwood, Structural	Yes	
710.002.002	Hardwood, Structural	Yes	
710.002.003	Hardwood, Bridge Decking	Yes	
710.002.004	Graded Material	No	
710.003.000	Preservative Treatment	No	
710.004.000	Wood Preservers	Yes	
710.005.000	Post, Wood, Guardrail, Rectangular	Yes	
710.005.000.4	Post, Wood for Fence and Signs	Yes	
710.006.000	Plywood	Yes	
710.007.000	Common Lumber	Yes	
710.008.000	Poles, Service and Lighting, Wood	Yes	
711.005.000	Concrete Protective Coatings And Stain	Yes	

DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	CoC Required	Notes
711.006.000.1	Paint, Zinc Primers, Organic	Yes	
711.006.000.2	Paint, Zinc Primers, Inorganic	Yes	
711.012.000	Paint, Epoxy Coatings	Yes	
711.022.000	Paint, Zinc Rich Low VOC System	Yes	
711.022.003	Paint, Intermediate Coat	Yes	
711.022.004	Paint, Top Coat	Yes	
711.040.000	Paint, Temporary, White, Yellow Traffic	No	
711.041.000.1	Paint, White or Yellow, Fast-Dry Traffic	Yes	
711.041.000.2	Paint, Yellow, Fast-Dry Traffic	Yes	
712.004.000	Guardrail, Fasteners and Anchor Bolts, Stains for Galvanized Steel	Yes	
712.004.001	Guardrail Splice Bolt	Yes	
712.004.002	Guardrail Post Bolt	Yes	
712.004.003	Guardrail Nuts	Yes	
712.004.004	Guardrail Washers	Yes	
712.004.005	Guardrail Beam, Steel	Yes	
712.004.007	Guardrail End, Steel	Yes	
712.005.000	Guardrail, Fasteners and Anchor Bolts, Zinc-Aluminum-Magnesium	Yes	
712.008.001	Fence, Steel, Chain-Link	Yes	
712.009.000.1	Fence, Wire, Steel, Right of Way, Zinc Coated (Galvanized) Class 1	Yes	
712.009.000.2	Fence, Wire, Steel, Right of Way, Zinc Coated (Galvanized) Class 3	Yes	
712.010.000	Barbed Wire, Coated Steel	Yes	
712.011.000	Fence, Safety	Yes	
713.002.000	Pipe and Pipe Arch, Metallic Coated Corrugated Steel	Yes	
713.003.000	Pipe and Pipe Arch, Asphalt Coated Corrugated Steel	Yes	
713.005.001	Pipe, Fiber Bonded Full Bituminous Coated Steel	Yes	
713.018.000	Box Culvert, Aluminum Alloy Structural Plate	Yes	
713.020.000	Pipe, End Sections for Corrugated Steel Pipe and Pipe Arch	Yes	
713.024.000	Pipe and Pipe Arch, Aluminum Coated Corrugated Steel	Yes	
714.002.000	Pipe, Reinforced Concrete Culvert, Storm Drain & Sewer, Class III, I	Yes	*1
714.003.000	Pipe, Concrete, Arch, Storm Drain & Sewer	Yes	*1
714.004.000	Pipe, Reinforced Concrete, Elliptical Culvert, Storm Drain & Sewer	Yes	*1
714.005.000	Pipe, Perforated Concrete	Yes	*1
714.007.000	Box Culverts, Reinforced Concrete, Precast	Yes	*1
714.008.000	Concrete End Sections	Yes	*1
714.017.000	Pipe, Polypropylene, Dual Wall, 12-60 Inches	Yes	
714.018.000	Pipe, High Density Polyethylene, Steel Reinforced	Yes	
714.019.000.1	3-6 inches Perforated Pipe, High Density Polyethylene, Profile Wall	Yes	
714.019.000.2	3-10 inches Non Perforated Pipe, High Density Polyethylene, Profile	Yes	
714.019.000.3	12-60 inches Pipe, High Density Polyethylene, Profile Wall	Yes	
714.020.000	Pipe, Perforated Plastic Semicircular	Yes	
714.022.000	Pipe, Polyvinyl Chloride (PVC)	Yes	
714.023.000	Box Culverts, Concrete, Precast Reinforced	Yes	
714.024.000	Pipe, Storm Drain, Non-Asbestos, Fiber-Cement	Yes	
715.001.000	Chloride, Calcium	No	

DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	CoC Required	Notes
715.002.000	Chloride, Sodium	No	
715.004.001	Cementitious Materials, PCC Concrete Repair Materials	No	
715.004.002	Non-Cementitious Materials, Concrete Repairs	No	
715.005.000	Cement Grout, Pakaged Dry, Hydraulic, Non-Shrink	No	
715.005.000.1	Plant Produced Grout	No	
715.006.000	Lime, Hydrated	No	
715.007.000	Water for Hydraulic Cement	No	
715.008.000	Fabric, Waterproofing	Yes	
715.009.003.6	Delineator Post, Soil Mounted Plastic	Yes	
715.009.003.7	Delineator Post, Guardrail Mounted Plastic	Yes	
715.009.003.8	Delineator - Type B1	Yes	
715.011.00X	Geotextile - Eng Fabric, All Types	Yes	
715.011.010	Engineering Fabric for Pumped Sediment and Erosion Control (Dewa	Yes	
715.012.000	Concrete, Miscellaneous Uses	No	
715.013.000	Fabric Pads, Preformed	Yes	
715.014.000	Bearing Pads, Elastomeric, Plain & Reinforced	Yes	
715.015.000	Neoprene Sheeting for Miscellaneous Items	Yes	
715.016.000.001	Brick, Clay or Shale, Sewer Brick	No	
715.016.000.002	Brick, Clay or Shale, Building Brick	No	
715.017.000	Brick, Concrete	No	
715.018.000	Concrete Units, Masonry	No	
715.019.000.01	Concrete Units, Manholes and Inlets (Precast) Special	Yes	*1
715.019.000.0X	Manhole, All Types (Precast)	Yes	*1
715.019.000.04	Inlet, All Types	Yes	*1
715.019.000.14	Lift Station & Valve Vault (Precast)	Yes	*1
715.020.000	Precast Concrete Median Barriers (Temporary)	Yes	*1
715.022.000	Precast Concrete Median Barriers (Permanent)	Yes	*1
715.023.000	Gabion Baskets	Yes	*1
715.024.002.X	Matting for Erosion Control, All Types	Yes	
715.025.000	Limestone, Ground Agricultural	No	
715.026.001	Fertilizer, Seeding	No	
715.026.002	Fertilizer, Landscape Planting	No	
715.027.001.1	Mulch, Straw, Seeding	No	
715.027.001.2	Mulch, Wood Cellulose, Seeding	No	
715.027.001.3	Mulch Binder, Chemical, Seeding	No	
715.027.002	Mulch Materials, Landscape Plantings	No	
715.028.000	Seed	No	
715.029.000	Inoculating Bacteria	No	
715.033.000	Vines and Ground Cover Plants	No	
715.034.000	Seedling Plants	No	
715.035.000	Trees and Shrubs	No	
715.036.000	Asphaltum Base Paint for Tree Surgery	No	
715.037.001	Tree Stakes	Yes	
715.037.002	Wire, Guying and Staking Plants	Yes	

DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	CoC Required	Notes
715.037.003	Hose, Guying and Staking Plants	No	
715.037.004	Twine, Tying Wrapped Tree Trunks	No	
715.037.005	Tree Wrap	No	
715.037.006	Anti-Desiccant - Emulsion Protective Film	No	
715.038.000	Manhole Steps	Yes	
715.039.000	Elastomeric Gasket & Sealing Material	Yes	
715.040.002	Pavement Preformed Marking Material, Type V	No	
715.040.006.1	Raised Pavement Markers, Type P-2, RPM	Yes	
715.040.006.2	Raised Pavement Marker, Type R-4, RPM	Yes	
715.041.001	Traffic Safety Devices, Attenuating Type V	Yes	
715.041.001.01	Reflective U-Channel Strips	Yes	
715.041.001.02	Channelizer Cones	No	
715.041.00X	Traffic Safety Devices, Attenuating All Types	Yes	
715.042.000.1	Traffic Signal Materials & Equipment	Yes	
715.042.000.2	Traffic Signals, Miscellaneous	Yes	
715.042.005.2	Loops (LPS)	Yes	
715.042.005.3	Closed Circuit Television (PAS-CCTV)	Yes	
715.042.005.4	Pedestrian Detector with Audible	Yes	
715.042.005.5	Radar Advance Digital Detection (RADD)	Yes	
715.042.005.6	Video Detection Cameras (VTDS)	Yes	
715.042.006.2	Signal Sections (V12) (V12P) (G16)	Yes	
715.042.009.1.2	Signal Supports, Mast Arm	Yes	
715.042.009.1.3	Supports, Signal, Video Arm	Yes	
715.042.009.2	Signal Supports, Strain Types C1, C1L, C2 and C2L	Yes	
715.042.009.2.2	Signal Supports, Anchor Bolts	Yes	
715.042.009.3	Signal Support, Wood	Yes	
715.042.009.4.1	Signal Supports, Aluminum, Pedestal E-1	Yes	
715.042.009.4.2	Signal Support, Steel, Pedestal E-2	Yes	
715.042.009.4.3	Signal Support, Steel, Pedestal E-3	Yes	
715.042.010.1	Conduit, Rigid, Type R	Yes	
715.042.010.2	Conduit, Flexible, PVC Cover	Yes	
715.042.010.3	Conduit, Type P (Polyvinyl Chloride)	Yes	
715.042.011.X	Junction Box, All Types, All Duty, Cast in Place	Yes	*1
715.045.000	Bentonite	No	
716.001.001	Random Material	No	
716.001.001.1	Soil	No	
716.001.001.2	Granular Material	No	
716.001.001.3	Shale, Soft	No	
716.001.002	Rock	No	
716.001.003	Shale, Hard	No	
716.001.004	Borrow Material	No	
718.000.000.1	Waterline Items	Yes	
718.000.000.2	Sewerline Items	Yes	
718.001.000	Pipe, Ductile Iron	Yes	

DOH-M-22 WVDOH Buy America Requirement Materials

AWP Material Code	Material Description	CoC Required	Notes
718.005.000	Pipe, Plastic (PVC) Waterline	Yes	
718.007.000	Pipe, Plastic (Polyethylene) Waterline	Yes	
718.009.000	Service Line, Copper	Yes	
718.010.000	Gate Valves	Yes	
718.011.000	Valve Box	Yes	
718.012.000	Pipe, Casing, Water/Sewer	Yes	
718.013.000	Fire Hydrants	Yes	
718.014.000	Meters	Yes	

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

Note: AWP Material Code is for MCST internal use only.

Note *1 - Only Steel/Iron/Non-Ferrous Components in this Material are Subject to Buy America Requirements.

Attachment 3 – M-22-11 –

Link to file: <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>



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

April 18, 2022

M-22-11

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young
Director

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

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 (“the Act”). Pub. L. No. 117-58, §§ 70901-52. The Act strengthens Made in America Laws¹ and will bolster America’s industrial base, protect national security, and support high-paying jobs. The Act requires that no later than May 14, 2022—180 days after the enactment of the IIJA—the head of each covered Federal agency² shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be 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.”³

The Act 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 “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.”⁴

The Act provides statutory authorities for the Made in America Office (“MIAO”) in the Office of Management and Budget (“OMB”) to maximize and enforce compliance with Made in

¹ “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating to Federal financial assistance awards or Federal procurement, including those that refer to “Buy America” or “Buy American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States. Made in America Laws include laws requiring domestic preference for maritime transport, including the Merchant Marine Act of 1920 (Pub. L. No. 66-261), also known as the Jones Act. Exec. Order No. 14,005, 86 Fed. Reg. 7475, § 2(b) (Jan. 28, 2021), available at <https://www.federalregister.gov/documents/2021/01/28/2021-02038/ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers>. Made in America Laws also include laws that give preference to Indian-owned and -controlled businesses, such as the Buy Indian Act (25 U.S.C. 47), that produce items in the United States.

² 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).

³ IIJA, § 70914(a).

⁴ Exec. Order No. 14,005 (see footnote 1).

America Laws.⁵ MIAO aims to increase reliance on domestic supply chains and reduce the need for waivers through a strategic process aimed at: achieving consistency across agencies; gathering data to support decision-making to make U.S. supply chains more resilient; bringing increased transparency to waivers in order to send clear demand signals to domestic producers; and concentrating efforts on changes that will have the greatest impact.⁶

This memorandum provides implementation guidance to Federal agencies on the application of: (1) a “Buy America” preference⁷ to Federal financial assistance programs for infrastructure; and (2) a transparent process to waive such a preference, when necessary. A Federal financial assistance program for infrastructure is any program under which an award may be issued for an infrastructure project, regardless of whether infrastructure is the primary purpose of the award. The term “project” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States.⁸

Agencies should determine how this guidance is best applied to their infrastructure programs and processes, and consult with OMB, as needed, on establishing criteria, processes, and procedures for applying a Buy America preference and issuing waivers. OMB may update or provide additional guidance, as appropriate, to further assist agencies in the implementation of a Buy America preference.

I. Application of a Buy America Preference

By May 14, 2022, agencies must ensure that all applicable programs comply with section 70914 of the Act, including by the incorporation of a Buy America preference in the terms and conditions of each award with an infrastructure project.⁹ The Act requires the following Buy America preference:

- (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 for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

⁵ IJA, § 70923(a) & (b)(1).

⁶ OMB Memorandum M-21-26, Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws available at: <https://www.whitehouse.gov/wp-content/uploads/2020/11/M-21-06.pdf>

⁷ For the purposes of this guidance, a “Buy America” preference is a domestic content procurement preference as defined in IJA, § 70912(2).

⁸ IJA, § 70912 (5) & (7).

⁹ See Appendix I: Example of Award Term - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials.

- (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.^{10, 11}

II. Applicability to Federal Financial Assistance Programs

This guidance applies to all Federal financial assistance as defined in section 200.1 of title 2, Code of Federal Regulations¹²—whether or not funded through IIJA—where funds are appropriated or otherwise made available and used for a project for infrastructure. 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.¹³

For purposes of this guidance, for-profit organizations are not considered non-Federal entities. However, this guidance does not alter independent statutory authorities that agencies may have to include domestic content requirements in awards of Federal financial assistance issued to for-profit organizations.

Federal agencies are encouraged to consult with OMB if they are uncertain about the applicability of this guidance to any particular infrastructure program.

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-Nation Relationships. Federal agencies should commence consultation promptly.

This guidance does not apply to “expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.”¹⁴ “[P]re and post disaster or emergency response expenditures” consist of expenditures for financial assistance that are (1) authorized by statutes other than the Stafford Act, 42 U.S.C. §§ 5121 et seq., and (2) made in anticipation of or response to an event or events that qualify as an “emergency” or “major disaster” within the meaning of the Stafford Act, *id.* § 5122(1), (2). Awards made to support the construction or improvement of infrastructure to mitigate the damage that may be caused by a non-imminent future emergency or disaster, such as awards

¹⁰ IIJA, § 70912 (2) & (6)(B)(ii).

¹¹ See Section VIII. of this guidance for more information on construction materials.

¹² IIJA § 70912(4)(A)

¹³ See 2 C.F.R. § 200.1.

¹⁴ IIJA § 70912(4)(B)

made under FEMA’s Flood Mitigation Assistance program,¹⁵ do not qualify as “pre and post disaster or emergency response expenditures.”

Subawards should conform to the terms and conditions of the Federal award from which they flow.¹⁶

The IIJA’s definition of “infrastructure” encompasses public infrastructure projects. Thus, the term “infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, 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.¹⁷ Agencies should treat structures, facilities, and equipment that generate, transport, and distribute energy - including electric vehicle (EV) charging - as infrastructure.

When determining if a program has infrastructure expenditures, Federal agencies should interpret the term “infrastructure” broadly and consider the definition provided above as illustrative and not exhaustive. When determining if a particular construction project of a type not listed in the definition above 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. Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project. Federal agencies are strongly encouraged to consult with OMB when making such determinations.

Agencies should consult with MIAO regarding their readiness to apply the requirements of the Act to covered programs. Agencies with questions regarding the application of a Buy America preference to agency-specific programs, including questions about the possible use of waivers during adjustment periods as agencies work to implement the Act, are advised to reach out to MIAO for technical assistance and advice.

III. Consistency with International Agreements

Pursuant to section 70914(e) of the Act, this guidance must be applied in a manner consistent with the obligations of the United States under international agreements.

IV. Avoid Unnecessary Disruption

The Act makes clear that its preferences apply to a Federal financial assistance program for infrastructure only to the extent that a domestic content procurement preference as described

¹⁵ See 42 U.S.C. § 4104c.

¹⁶ 2 CFR 200.101 (b) (2)

¹⁷ IIJA, § 70912(5).

in section 70914 of the Act does not already apply to iron, steel, manufactured products, and construction materials.¹⁸ Agencies should consider whether existing domestic content requirements meet the standards in the Act, as described in this memorandum. Agencies must make necessary changes to come into compliance with the Act's requirements, while preserving policies and provisions that already meet or exceed the standards required by the Act. For example, a program in which the standards for iron and steel already meet the standards in the Act 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 Build America, Buy America requirements.

V. Effective Date for Awards

Agencies must ensure that, starting on May 14, 2022, all Federal financial assistance programs for infrastructure comply with the requirements of section 70914 of the Act. Therefore, new awards made on or after May 14, 2022, must take appropriate steps to ensure financial assistance awards comply with these requirements, which may include appropriate terms and conditions¹⁹ incorporating a Buy America preference. Renewal awards and amendments obligating additional funds to existing awards that are executed on or after May 14, 2022, must also include a Buy America preference. This means that agencies must include a Buy America preference in awards issued on or after May 14, 2022, even if Notices of Funding Opportunities for those awards did not include a Buy America preference. In these cases, agencies may consider whether public interest waivers may be needed to avoid undue increases in the time and cost of a project. Similarly, public interest waivers may be needed for awards and amendments made on or after May 14, 2022, where budgets for purchase of covered materials have already been agreed upon (including if materials have been ordered and construction has begun). Consistent with the guidance provided below, agencies should issue waivers judiciously and clearly communicate to recipients the limitations and conditions of any such waivers.

VI. Articles, Materials, and Supplies for Infrastructure

A Buy America preference, as defined in section I of this guidance, only applies to the iron and steel, manufactured products, and construction materials used for the infrastructure project under an award. If an agency has determined that no funds from a particular award under a covered program will be used for infrastructure, a Buy America preference does not apply to that award. Similarly, for a covered program, a Buy America preference does not apply to non-infrastructure spending under an award that also includes a covered project. 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.

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

¹⁸ IJA, § 70917(a) &(b).

¹⁹ See Appendix I: Example of Award Term - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials for exemplary language.

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 or permanently affixed to the structure.

For the purposes of this guidance, an article, material, or supply should only be classified into *one* of the following categories: (1) iron or steel; (2) a manufactured product; or (3) a construction material. For ease of administration, an article, material, or supply should not be considered to fall into multiple categories. Agencies should apply the iron and steel test to items that are predominantly iron or steel, unless another standard applies under law or regulation.

Any waivers from these requirements must be in writing and meet the requirements of section 70914(b).

VII. Issuing Buy America Waivers

Pursuant to Section 70914(c) of the Act, 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—

- (1) applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);
- (2) 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
- (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 (an “unreasonable cost waiver”).

Federal agencies are responsible for processing and approving all waivers, including waivers requested by recipients and on behalf of subrecipients. To the greatest extent practicable, waivers should be targeted to specific products and projects.²⁰

Before issuing a waiver, the head of the Federal agency must make publicly available on the agency’s website a detailed written explanation for the proposed determination to issue the waiver and provide at least 15 days for public comment on the proposed waiver.²¹ General applicability waivers are subject to a minimum 30-day public comment period.²² By April 29, 2022, agencies should provide the website address where they will be posting proposed waivers for public comment to MBX.OMB.MadeInAmerica@omb.eop.gov. Pursuant to sections 70914(c) and 70937 of the Act, the waiver must be cross-posted to a centralized waiver transparency website managed by GSA, [BuyAmerican.gov](https://www.buyamerican.gov),²³ no later than November 15, 2022.

²⁰ See Section VII of this guidance for information on waiver principles and criteria.

²¹ Executive Order, § 4(b)(i)(2); IJJA, § 70914(c); IJJA, § 70937 (note that “Buy American” as used in this section also refers to Buy America preferences, per IJJA, § 70932(1)).

²² IJJA § 70914(d)(2)(A)(ii). See Section VII of this guidance for information on general applicability waivers.

²³ [BuyAmerican.gov](https://www.buyamerican.gov) redirects to [MadeInAmerica.gov](https://www.madeinamerica.gov).

To minimize duplication and promote efficiency, MIAO and GSA will 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 and approving or rejecting waivers consistent with the Act, this guidance, and any other applicable Buy America laws. Federal agencies should notify MIAO in advance of posting an award- or project-level proposed waiver for public comment. However, Federal agencies must consult with 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.

Federal agencies must submit to MIAO a proposed waiver for review after the public comment period has concluded. MIAO will review the proposed waiver to determine if it is consistent with applicable law and policy,²⁴ 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 States²⁵ 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, and nonproprietary communications with potential suppliers.²⁶ In addition, at a minimum and to the greatest extent practicable, each proposed waiver submitted to 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)
- Federal financial assistance funding amount
- Total cost of infrastructure expenditures, including all Federal and non-Federal funds (to the extent known)
- Infrastructure project description and location (to the extent known)
- 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 PSC and NAICS code for each.
- A certification that the Federal official or assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.

²⁴ Executive Order, § 4(c).

²⁵ IIJA, § 70937(c)(2)(A).

²⁶ IIJA, § 70937(c)(2)(D).

- A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach), by the Federal awarding agency and, 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 justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
- Anticipated impact if no waiver is issued.
- Any relevant comments received through the public comment period.

The purpose of the information is to ensure that the agency has adequate information to perform due diligence, that MIAO has sufficient information to determine whether the proposed waiver is consistent with law and policy, and 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 should be considered the “Cognizant Agency for Made in America” and should take responsibility for coordinating with the other Federal awarding agencies. Such coordination will provide uniform waiver criteria and adjudication processes, minimize duplicative efforts among Federal agencies, and reduce burdens on recipients. The Cognizant Agency for Made in America shall be responsible for consulting with the other Federal awarding agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to MIAO.

a. Exceptions for Unforeseen and Exigent Circumstances

In limited situations where there is an urgent need in an unforeseen and exigent circumstance, agencies have the authority to waive the application of Buy America preferences without submitting the waiver for public comment and MIAO determination.²⁷ As an exception to the public transparency requirements of the Act, agencies should exercise that authority only when necessary. Further, to ensure MIAO can fulfill its role as a central and transparent source of Made in America waivers, an agency that issues a waiver without first seeking public comment and MIAO approval must, within 30 days of the waiver’s issuance, submit a report to MIAO explaining its reliance upon the “unforeseen and exigent circumstance” exception.²⁸ MIAO will provide further instructions to agencies on how to submit those reports. Although public posting and MIAO review may be waived in exigent circumstances, agencies remain responsible for performing due diligence appropriate to the circumstances, consistent with the principles and criteria in paragraphs VII(b) and (c) below.

²⁷ IJA, § 70937(b)(2).

²⁸ This reporting process was established pursuant to Executive Order 14,005, § 4(d) and OMB Guidance on Improving the Transparency of Made in America Waivers available at: <https://www.whitehouse.gov/wp-content/uploads/2021/10/Guidance-Memo-Improving-the-Transparency-of-Made-in-America-Waivers.pdf>.

b. *Waiver Principles and Criteria*

To ensure they are scrupulously monitoring, enforcing, and complying with applicable Buy America Laws and minimizing the use of waivers,²⁹ agencies must apply standard criteria to determine whether to grant a waiver in a given circumstance. Agencies with existing criteria must review it for consistency with this guidance and update it as appropriate. All other agencies must establish criteria.

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. 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 MIAO when establishing or modifying criteria for granting waivers. They may also work within the Made in America Council, a practice that will help to foster consistency across agencies to the greatest extent practical and appropriate, given agency and program missions.

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, rather than by the specific projects to which it applies. Waivers of this type may be appropriate, for example, when an item that is “nonavailable” is widely used in projects funded by a particular program’s awards. When issuing such a waiver, the agency should identify a short, 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 MIAO.
- **Conditional:** Federal agencies are encouraged to issue waivers with specific conditions that support the policies of the Act and the Executive Order.

These principles and criteria should be viewed as minimum requirements for the use of waivers by Federal agencies.³⁰

Nonavailability Waivers

Before granting a nonavailability 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

²⁹ IJA § 70933(2).

³⁰ See Section IV. of this guidance for agencies that have existing regulations or guidance.

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, as applicable, a comparison of the cost of the domestic product to the cost of the foreign product or 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.³¹ Publicly available cost comparison data may be provided in lieu of proprietary pricing information.³² Unreasonable-cost waivers should be no broader than necessary.

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 the Act and the proposed waiver would not meet the requirements for a nonavailability or unreasonable cost waiver. Such waivers shall be used judiciously and construed to ensure the maximum utilization of goods, products, and materials produced in the United States.³³ To the extent permitted by law, determination of public interest waivers shall be made by the head of the agency with the authority over the Federal financial assistance award.³⁴

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

³¹ IIJA, § 70937(c)(2)(B).

³² IIJA, § 70937(c)(2)(B).

³³ IIJA, § 70935(a).

³⁴ IIJA, § 70935(b).

given project; the Made in America Office will not review each application of such a waiver. The following are examples of types of public interest waivers an agency may consider issuing.³⁵

- **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 5 percent of project costs up to a maximum of \$1,000,000.
- **Small Grants:** Agencies may wish to consider whether it is in the public interest to waive application of a Buy America preference to awards below the Simplified Acquisition Threshold. This type of waiver may be particularly relevant in the initial years after enactment of IJIA, and may be phased out over time as agencies develop efficient 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 minor components waiver in the public interest may allow non-domestically produced miscellaneous minor components comprising no more than 5 percent of the total material cost of an otherwise domestically produced iron and steel product to be used. 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.
- **Adjustment Period:** Agencies should consider whether brief, time limited waivers to allow recipients and agencies to transition to new rules and processes may be in the public interest.
- **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 job 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 shall address all appropriate factors, such as potential

³⁵ 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.

obligations under international agreements, justifying why the requested waiver is in the public interest.³⁶

Before granting a waiver in the public interest, to the extent permitted by law, agencies shall 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.³⁷ 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 shall integrate any findings from the assessment into its waiver determination as appropriate.³⁸ 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.

c. General Applicability Waivers

The term “general applicability waiver” refers to a waiver that applies generally across multiple 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 IJJA, the Executive Order, and this guidance. For example, an agency might issue a general waiver for a product for which there are well-established domestic sourcing challenges. General applicability waivers will require appropriate justification from the Federal agency.

Federal agencies with one or more existing general applicability waivers, including public interest waivers, must review such waivers within five years of the date on which the waiver was issued. Agencies issuing new general applicability waivers must review such waivers at least every five years from the date of issuance. Agencies are encouraged to review general applicability waivers more frequently, when appropriate. In conducting a review of any general applicability waiver, the head of a Federal agency shall—

- (A) publish in the *Federal Register* a notice that—
 - (i) describes the justification for a general applicability waiver; and
 - (ii) requests public comments for a period of not less than 30 days on the continued need for a 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).³⁹

³⁶ IJJA, § 70937(c)(2)(C).

³⁷ Executive Order, § 5.

³⁸ Executive Order, § 5.

³⁹ IJJA, § 70914(d)(1) & (2).

For a period of five years beginning on the date of enactment of the Act, paragraphs (A) and (B) above shall not apply to any product-specific general applicability waiver that was issued more than 180 days before November 15, 2021.⁴⁰

By no later than November 15, 2022, agencies with existing, non-product specific general applicability waivers that were issued more than five years before November 15, 2021 should promptly commence review of each such waiver by publishing a *Federal Register* notice as required in section 70914(d)(2)(A) of the IJJA. 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.

To ensure prompt commencement of projects funded by IJJA, MIAO plans to 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 qualifying products receive appropriate consideration.

VIII. Preliminary Guidance for Construction Materials

For construction materials, the Act requires that, not later than 180 days after November 15, 2021, OMB must issue standards that define the term “all manufacturing processes” in the case of construction materials. These standards must require that each manufacturing process required for the manufacture of the construction material and the inputs of the construction material occurs in the United States. They must also reflect efforts to maximize the direct and indirect jobs benefited or created in the production of the construction material.⁴¹

Although the deadline to issue such guidance has not yet passed, OMB is providing preliminary and non-binding guidance to assist agencies in determining which materials are construction materials so that agencies can begin applying Buy America requirements to those materials. This preliminary guidance addresses the requirements as set forth in section 70915(b) of the IJJA while providing sufficient time for OMB to receive additional stakeholder input.

The IJJA 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 additives⁴²—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);

⁴⁰ IJJA, § 70914(d)(3).

⁴¹ IJJA, § 70915(b).

⁴² IJJA, § 70917(c)(1).

- lumber; or
- drywall.⁴³

To provide clarity to item, product, and material manufacturers and processors, we note that 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.

Pending OMB's issuance of final standards on construction materials, and 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. OMB is seeking additional stakeholder input before issuing further guidance identifying initial manufacturing processes for construction materials that should be considered as part of "all manufacturing processes."

Agencies should consult with MIAO, as needed, to ensure that any waiver issued for construction materials is explicitly targeted and time-limited, in order to send a clear market signal that additional standards for "all manufacturing processes" in the case of construction materials will be forthcoming.

⁴³ See IIIA, § 70911(5).

Appendix I: Example of Award Term - 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 the Act 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 MIAO for review prior to incorporating them into applicable awards. Agencies should begin including appropriate language in NOFOs published *before* May 14, 2022 to provide applicants fair notice of the Buy America conditions that will apply to funds obligated on or after that date.

** ** **

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 a project for infrastructure 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 for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials⁴⁴ are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

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.

⁴⁴ Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

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.

- (a) When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:
 - (1) applying the domestic content procurement 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 domestic content procurement 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*⁴⁵

“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 additives⁴⁶—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.

⁴⁵ 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 do 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.

⁴⁶ IIIA, § 70917(c)(1).

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, 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. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.