



BIPARTISAN INFRASTRUCTURE LAW
SECTION-BY-SECTION ANALYSIS OF
THE BUILD AMERICA, BUY AMERICA PROVISIONS
OF THE INFRASTRUCTURE INVESTMENT AND JOBS ACT (P.L. 117-58)
January 1, 2022

Division G—Other Authorizations
Title IX—Build America, Buy America
Part I—Buy America Sourcing Requirements

Sec. 70911. Findings.

- Provides Congressional findings on the benefits of domestic content procurement preferences for public infrastructure investment and the need for a robust domestic manufacturing sector in the United States.

Sec. 70912. Definitions.

- Defines “deficient program” as a program identified by a federal agency under section 70913(c) (List of Deficient Programs);
- Defines “domestic content procurement” as a requirement that no amounts of federal financial assistance may be obligated for a project unless:
 - 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 U.S.; or
 - the construction materials used in the project are produced in the U.S.
- Defines “federal financial assistance” as the term is defined in 2 C.F.R. § 200.1. The term includes all expenditures by a federal agency to a non-federal entity for an infrastructure project, except that it does not include expenditures for assistance authorized under certain sections of the Robert T. Stafford Disaster Relief and Emergency Assistance Act relating to a major disaster or emergency.
- Defines “produced in the United States” as:
 - in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the U.S.;
 - in the case of manufactured products, that the manufactured product was manufactured in the U.S. and the cost of the components of the manufactured product that are mined, produced, or manufactured in the U.S. 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 has been established under applicable law or regulation; and
 - in the case of construction materials, that all manufacturing processes occurred in the U.S.; and
- Includes definitions of federal agency, infrastructure (e.g., public transportation, intercity passenger rail), and project.

Sec. 70913. Identification of Deficient Programs.

- Directs each federal agency, no later than 60 days after the date of enactment, to submit to the Office of Management and Budget (OMB) and to Congress, a report that identifies each federal financial assistance program for infrastructure administered by the agency. This section also directs each federal agency to publish the report in the Federal Register.
- In the report (for each federal program), requires each federal agency to:
 - identify all domestic preferences requirements applicable;
 - assess the applicability of domestic content procurement preference requirements in current law (including 49 U.S.C. § 5323(j) (Buy America));
 - provide details on any applicable domestic content procurement preference requirements, including the purpose, scope, applicability, and any exceptions and waivers issued under the requirement;
 - describe the type of infrastructure projects that receive funding under the program; and
 - identify a list of deficient programs for infrastructure for which the domestic content procurement preference does not apply in a manner consistent with section 70914 (Application of Buy America Preference) or is subject to a waiver of general applicability not limited to the use in a specific project.

Sec. 70914. Application of Buy America Preference.

- Requires each federal agency, not later than 180 days after the date of enactment, to 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 U.S.
- Authorizes a federal agency to waive the application of the domestic content procurement preference where:
 - applying the preference would be inconsistent with the public interest;
 - the types of iron, steel, manufactured products, or construction materials are not produced in sufficient and reasonably available quantities or of satisfactory quality; or
 - the inclusion of the iron, steel, manufactured products, or construction materials

produced in the U.S. will increase the cost of the overall project by more than 25 percent.

- Before issuing a waiver, requires the federal agency to make it publicly available on an OMB-designated website and the federal agency’s website with a detailed written explanation for the proposed determination, and to provide at least 15 days for public comment on the proposed waiver.
- Requires a federal agency to review, every five years from date of issuance, an existing general applicability waiver or a general applicability waiver issued under this section. In conducting a review of a general applicability waiver, the federal agency shall publish a notice in the Federal Register describing the justification for a general applicability waiver and provide not less than 30 days for public comment for the waiver. The section also requires the agency to publish the determination on whether to continue or discontinue the general applicability waiver in the Federal Register.
- Excludes existing product-specific general applicability waivers (issued more than 180 days before the date of enactment) from this review for five years after the date of enactment.

Sec. 70915. OMB Guidance and Standards.

- Directs OMB to issue guidance to each federal agency to assist in identifying deficient programs and applying new domestic content procurement preferences.
- Directs OMB to amend, if necessary, 2 C.F.R. subtitle A (Office of Management and Budget Grants and Agreements), to ensure that domestic content procurement preference requirements required by this section or other federal law are imposed through the terms and conditions of awards of federal financial assistance.
- Requires OMB, not later than 180 days after the date of enactment, to issue standards that define the term “all manufacturing processes” in the case of construction materials. In issuing standards, OMB shall ensure that the standards require that each manufacturing process required for the manufacture of the construction material (except for construction material excluded under section 70917) and the inputs of the construction material occurs in the U.S. and seeks to maximize direct and indirect jobs benefited or created in the production of the construction material.

Sec. 70916. Technical Assistance Partnership and Consultation Supporting Department of Transportation Buy America Requirements.

- In this section, defines “Buy America law” as domestic content procurement preferences for infrastructure projects under the jurisdiction of the Secretary of Transportation (Secretary) (including 49 U.S.C. § 5323(j) (Buy America));
- Directs the Secretary, not later than 90 days after the date of enactment, to enter into a

technical assistance partnership with the Secretary of Commerce, acting through the Director of the National Institute of Standard and Technology (NIST) to:

- ensure the development of a domestic supply base to support intermodal transportation in the U.S. (e.g., public transportation and high-speed passenger rail);
 - ensure compliance with Buy America laws that apply to a project receiving assistance from a DOT modal administration;
 - encourage technologies developed with the support of and resources from the Secretary to be transitioned into commercial markets and application; and
 - establish procedures for consultation.
- Requires the Secretary, before granting a written waiver under a Buy America law, to consult with the Director of the Hollings Manufacturing Extension Partnership regarding whether there is a domestic entity that could provide the iron, steel, manufactured product, or construction material that is the subject of the proposed waiver.
 - Directs the Secretary, not later than one year after the date of enactment and annually thereafter, to report to Congress that includes a detailed description of:
 - the consultation procedures;
 - each waiver requested in the preceding year and the results of the consultation;
 - each waiver granted, including the type of waiver and reasoning for granting the waiver; and
 - challenges and gaps in the domestic supply base, including a list of actions and policy changes that the Secretary recommends be taken to address the challenges and gaps.

Sec. 70917. Application.

- Provides that this Part applies to an infrastructure program only to the extent that a domestic content procurement preference does not already apply to iron, steel, manufactured products, and construction materials.
- Provides that nothing in this Part affects a domestic content procurement preference for an infrastructure program that is in effect and that meets the requirements of section 70914.
- Excludes from the definition of “construction materials”: cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.
- Limits the standards under section 70915 (OMB Guidance) from including cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives as inputs of the construction material.

Part II—Make it in America
