

**AMERICAN PUBLIC TRANSPORTATION ASSOCIATION**  
**FACT SHEET**  
**INFRASTRUCTURE INVESTMENT AND JOBS ACT**  
**BUILD AMERICA, BUY AMERICA TITLE**  
*March 7, 2022*

On November 15, 2021, President Joseph R. Biden, Jr. signed the Infrastructure Investment and Jobs Act (IIJA) into law, which includes a title addressing Buy America requirements for infrastructure projects.<sup>1</sup> The IIJA’s Build America, Buy America (BABA) title also encourages strengthening the Buy American Act regarding federal government procurement.<sup>2</sup> Under IIJA Buy America requirements, each federal agency must:

- Within 60 days, submit to the Office of Management and Budget (OMB) a report that identifies each federal financial assistance program for infrastructure administered by the agency. The report must identify all domestic content procurement requirements applicable; assess the applicability of domestic content procurement preference requirements in current law; provide details on any applicable domestic content procurement preference requirements and any exceptions or waivers; and describe the types of infrastructure projects that receive funding under the program. In addition, the report must identify programs for which the domestic content procurement preference does not apply or is subject to a waiver.
- within 180 days, “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, and manufactured products and construction materials used in the project are produced in the United States.”

On February 7, 2022, the Department of Transportation (DOT) published its report on [\*DOT’s Identification of Federal Assistance Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act.\*](#)<sup>3</sup>

In this Act, “produced in the United States” means:

- For iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the U.S.;
- For manufactured products, that the product was manufactured in the U.S. and the cost of the product components 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 applies; and

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<sup>1</sup> This title builds on [\*Executive Order 14005, Ensuring the Future is Made in All of America by All of America’s Workers\*](#) (Order); signed by President Joseph Biden on January 25, 2021; *see also* APTA Fact Sheet, *Executive Order on Ensuring the Future is Made in All of America by All of America’s Workers* (January 25, 2021).

<sup>2</sup> On March 7, 2022, the Administration issued a final rule on new Buy American requirements. Federal Acquisition Regulation: Amendments to the FAR Buy American Act Requirements, 87 Fed. Reg. 12780 (Mar. 7, 2022).

<sup>3</sup> DOT’s Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act, 87 Fed. Reg. 6943 (Feb. 7, 2022).

- For construction materials, that all manufacturing processes occurred in the U.S.

Note that the IIJA excludes from the definition of construction materials: cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. In addition, the Act limits the standards under § 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 materials.

A federal agency may 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 goods, or construction materials are not produced in sufficient and reasonably available quantities or satisfactory quality; or
- the inclusion of the materials produced in the United States will increase the cost of the project by more than 25 percent.

Before a federal agency may grant a waiver, it must make it publicly available and provide at least 15 days for public comment. Waivers issued after the date of enactment of this program will be reviewed every five years.<sup>4</sup>

The IIJA directs OMB to issue guidance to assist in identifying deficient programs and applying new domestic content procurement standards, and to define the term “all manufacturing processes” in the case of construction materials (except for the exempt materials listed above).

**In DOT’s Buy America report submitted to OMB pursuant to the BABA title, DOT finds that none of its programs, including public transit and passenger rail programs, is currently fully consistent with BABA requirements.**<sup>5</sup> DOT states:

...the mode-specific Buy America(n) statutes applied by most DOT agencies cover iron, steel and manufactured products, in ways that are generally consistent (or that in some cases exceed) that standards found in the BABA. **However, none of those statutes specifically cover construction materials**, other than to the extent that such materials would already be considered iron, steel, or manufactured products.<sup>6</sup> (emphasis added)

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<sup>4</sup> Please note that existing product-specific general applicability waivers issued more than 180 days prior to the date of enactment of this program are not subject to the review or public comment period for five years.

<sup>5</sup> [\*DOT’s Identification of Federal Assistance Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act\*](#), at 19.

<sup>6</sup> *Id.* At 21.

In addition, the legislation requires the Secretary of Transportation to enter into a technical assistance partnership with the Secretary of Commerce to:

- ensure the development of a domestic supply base to support intermodal transportation in the United States (e.g., high-speed passenger rail and public transportation);
- ensure compliance with Buy America laws that apply to a project receiving assistance from a DOT modal program;
- encourage technologies developed with the support of and resources from the Secretary to be transitioned into commercial market and application; and
- establish procedures for consultation with the Hollings Manufacturing Extension Partnership.

Finally, the IJA requires the Secretary of Transportation, before granting a waiver, to consult with the Director of the Hollings Manufacturing Extension Partnership regarding whether there is a domestic entity that can provide the material that is the subject of a waiver request.