



## Infrastructure Investment and Jobs Act (IIJA) Overview

On November 15, 2021, President Biden signed the IIJA into law, including the Build America, Buy America Act. This Act aims to strengthen U.S. industrial base, national security, and job creation by ensuring that federal funds for infrastructure projects use American-made iron, steel, manufactured products, and construction materials. Compliance is mandatory by May 14, 2022, in line with Executive Order 14005.

The Made in America Office (MIAO) within the Office of Management and Budget (OMB) oversees enforcement, focusing on bolstering domestic supply chains and limiting waivers. The entirety of the law can be found at (<https://www.federalregister.gov/documents/2021/11/15/2021-24697/improvements-and-updates-to-the-buy-america-guidelines>); however, below is an outline detailing the expectations that must be followed by all grantees involved with construction.

### **I. Buy America Preference**

Agencies must ensure compliance with section 70914 of the Act:

- 1. Iron and Steel:** All must be produced in the U.S., including all manufacturing processes.
- 2. Manufactured Products:** At least 55% of the components' total cost must be of U.S. origin.
- 3. Construction Materials:** All manufacturing processes must occur in the U.S.

### **II. Applicability to Federal Financial Assistance Programs**

This guidance applies to all Federal financial assistance defined in 2 CFR §200.1, including grants, cooperative agreements, and direct assistance to non-Federal entities (States, local governments, Indian tribes, IHEs, and nonprofits). For-profit organizations are excluded unless specified by statutory authorities.

#### **Key Points:**

- Agencies must consult OMB for guidance, especially for programs affecting Tribal communities.
- Expenditures under the Robert T. Stafford Disaster Relief and Emergency Assistance Act are excluded.
- "Infrastructure" is defined broadly to include public projects such as roads, highways, bridges, public transportation, dams, ports, railroads, airports, water systems, electrical transmission facilities, utilities, broadband infrastructure, buildings, and real property. This definition also encompasses facilities generating, transporting, and distributing energy, including EV charging stations. Federal agencies are advised to interpret "infrastructure" expansively and consult OMB for guidance, especially when determining if a project serves a public function or qualifies as infrastructure under the Act.

### **III. Consistency with International Agreements**



The guidance must align with U.S. obligations under international agreements as per section 70914(e) of the Act.

#### **IV. Avoid Unnecessary Disruption**

The Act's preferences apply only if no existing domestic content preference meets section 70914 standards. Agencies must assess current requirements to comply with the Act, avoiding disruptions where current policies already meet or exceed these standards.

#### **V. Effective Date for Awards**

Starting May 14, 2022, all Federal financial assistance programs for infrastructure must comply with section 70914 of the Act, including new awards, renewal awards, and amendments obligating additional funds. Public interest waivers may be considered to prevent undue project delays or cost increases.

#### **VI. Articles, Materials, and Supplies for Infrastructure**

A Buy America preference applies to iron, steel, manufactured products, and construction materials used in infrastructure projects. It does not apply to tools, equipment, temporary scaffolding, or non-permanent furnishings. Items should be classified as iron or steel, a manufactured product, or construction material. Waivers must be in writing and comply with section 70914(b).

#### **Issuing Buy America Waivers**

Under Section 70914(c) of the Act, the head of a Federal agency may waive Buy America preferences if:

1. Applying the preference is inconsistent with the public interest.
2. Required materials are not produced in the U.S. in sufficient quantities or quality.
3. Including U.S.-produced materials will increase project costs by over 25%.

#### *Waiver Process:*

- SCRC, in conjunction with MBI, will process and approve waivers, ensuring specificity to products and projects.
- Waivers will be publicly explained on the agency's website with a 15-day comment period; general waivers require 30 days.
- SCRC will consult MIAO for broader waivers and ensure post-comment waivers are reviewed by MIAO for legal and policy consistency.
- Waiver requests must include justifications and certifications of efforts to source domestic products.

#### *Exigent Circumstances:*



- Immediate waivers can be issued without public comment in urgent situations but must be reported within 30 days.

*Waiver Principles:*

- Waivers should be time-limited, targeted, and conditional.
- Nonavailability waivers require thorough market research.
- Unreasonable cost waivers need cost comparisons.
- Public interest waivers should maximize U.S. goods use and may include de minimis, small grants, minor components, adjustment periods, and international trade obligations.

*General Applicability Waivers:*

- Applicable across multiple awards, reviewed every five years.
- Agencies must justify and request public comments before continuing such waivers.

**Construction Materials Guidance:**

- "All manufacturing processes" must occur in the U.S., including non-ferrous metals, plastic, glass, lumber, and drywall.
- Agencies should consult MIAO for construction material waivers to ensure they are targeted and time limited.

**Additional Information**

For further details and guidance, refer to the original document (<https://www.federalregister.gov/documents/2021/11/15/2021-24697/improvements-and-updates-to-the-buy-america-guidelines>).

Printed Name of Authorized Official

Signature of Authorized Official

Date