Region 1 Supply Chain Workshop: Emerging Trends and Resilience Partnerships
April 21, 2022

New Buy America Requirements in Bipartisan Infrastructure Law – Navigating Supply Chain and Resiliency Issues

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Bipartisan Infrastructure Law (BIL)/ Infrastructure Investment and Jobs Act (IIJA)

- Signed by President Biden on November 15, 2021 (Public Law No. 117-58)
- Created a $550B supplemental appropriation for FY22-FY26
- $50B will go to water with $43.4B through SRFs
  - $11.7B each CWSRF & DWSRF
  - $15B DWSRF for lead service line (LSL) replacement
  - $4B DWSRF PFAS and emerging contaminants
  - $1B CWSRF emerging contaminants
- WIFIA Program will receive $250 million annually for FY22-26

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BIL/IIJA Priorities

- Provide flexibility to meet local water needs
- Increase investment in disadvantaged communities
- Make rapid progress on lead service line replacement
- Address PFAS and emerging contaminants
- Support resilience and one water innovation
- Support American workers and renew the water workforce
- Cultivate domestic manufacturing

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BIL/IIJA Priorities

- Increase investment in disadvantaged communities
  - 49% of DWSRF general funding and LSL replacement funds as grants and forgivable loans to disadvantaged communities
  - 49% of CWSRF general funding as grants and forgivable loans to communities that meet state's affordability criteria
  - 25% of DWSRF emerging contaminants funding as grants and forgivable loans to disadvantaged communities or PWSs <25,000 people
- Support resilience and one water innovation
  - States encouraged to use new funding to make water systems more resilient from natural disasters, climate change, bioterrorism, and cyber attacks

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BIL/IIJA Priorities

- Cultivate domestic manufacturing
  - Build America Buy America (BABA) Act of 2021 part of BIL
  - Applies to new SRF funding, grants, cooperative agreements, non-cash contributions, direct assistance, loans, loan guarantees for ALL Federal financial assistance
  - Expands American Iron and Steel requirements and also includes manufactured products and construction materials
  - Applies to entire project, even non-Federal assistance, if any Federal funds are used

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Current AIS Requirements

- Applies to all components of a project if it has $1 of Federal funding
- Product on list must be more than 50% I&S by cost to apply
- All processes from melting to coating must be done in U.S. – can't leave country and come back

- Includes waiver process – public interest, availability, and cost if increases <u>project cost</u> by 25%



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Current AIS Applicability



Is the product a listed product?

- Consolidated Appropriations Act, 2014 identified a list of products that are covered under the AIS provision
  - Lined or unlined pipes or fittings
  - Manhole Covers
  - Municipal Castings
  - Hydrants
  - Tanks
  - Flanges
  - Pipe clamps and restraints
  - Valves
  - Structural steel
  - Reinforced precast concrete
  - Construction materials
- Several “listed products” are categories of products

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AIS Municipal Castings

Municipal Castings

- Access Hatches
- Ballast Screen
- Benches (Iron or Steel)
- Bollards
- Cast Bases
- Cast Iron Hinged Hatches, Square and Rectangular
- Cast Iron Riser Rings
- Catch Basin Inlet
- Cleanout/Monument Boxes
- Construction Covers and Frames
- Curb and Corner Guards
- Curb Openings
- Detectable Warning Plates
- Downspout Shoes (Boot, Inlet)
- Drainage Grates, Frames and Curb Inlets
- Inlets
- Junction Boxes
- Lampposts
- Manhole Covers, Rings and Frames, Risers
- Meter Boxes
- Service Boxes
- Steel Hinged Hatches, Square and Rectangular
- Steel Riser Rings
- Trash receptacles
- Tree Grates
- Tree Guards
- Trench Grates
- Valve Boxes, Covers and Risers

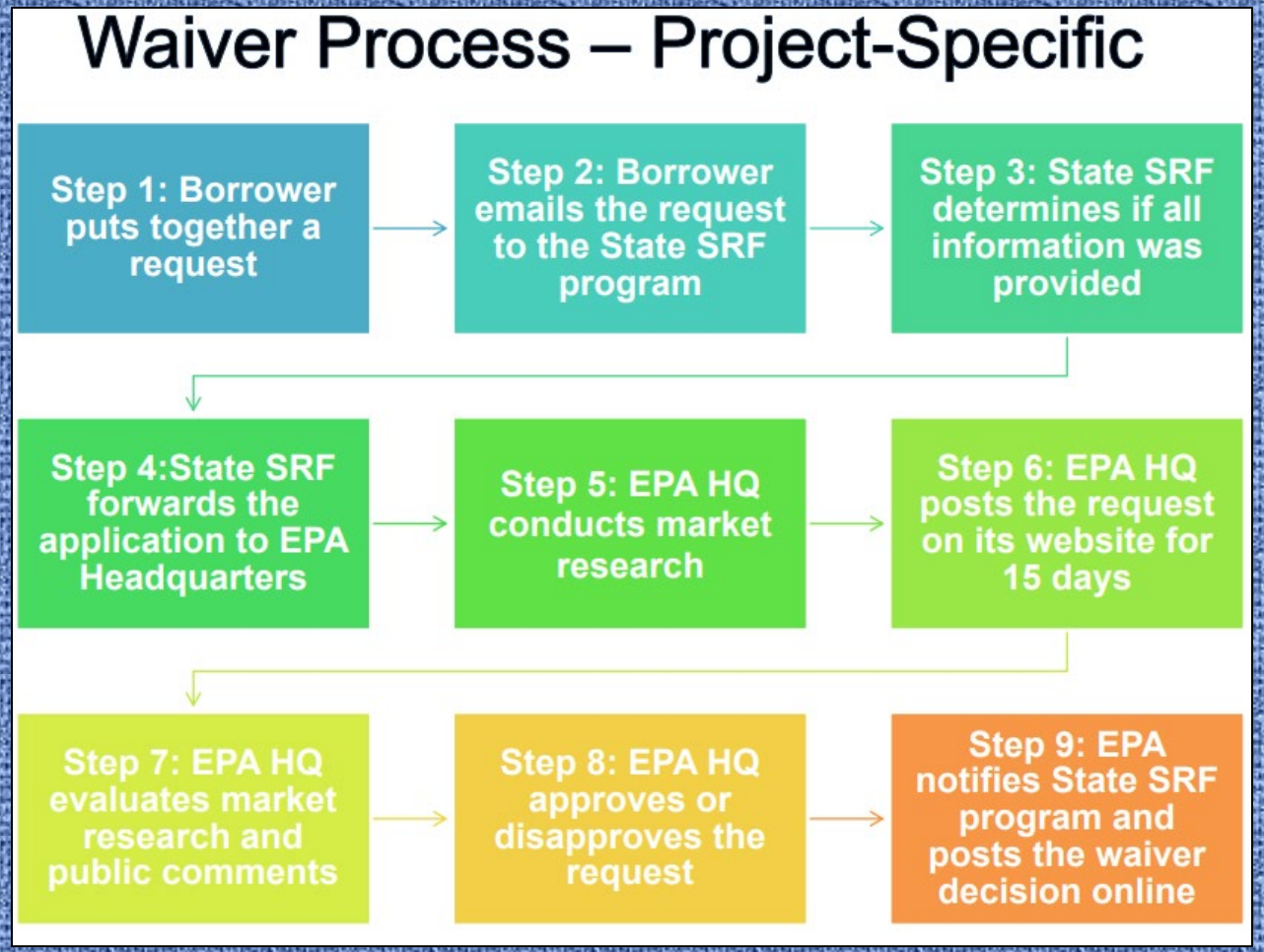
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Products NOT Covered by AIS

- Pumps, motors, gear reducers, drives (including VFDs)
- Electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens)
- Blowers/aeration equipment, membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors
- Meters, sensors, controls and switches, SCADA
- Analytical instrumentation

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Current Waiver Process



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BIL/BABA

Greatly Expands Buy America Requirements



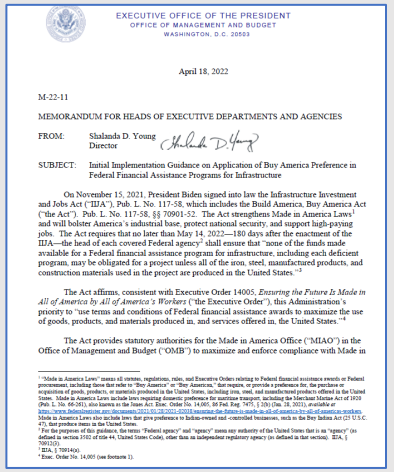
- Applies to all Federal agencies and sectors, including DW and WW
- Applies to both loans and grants
- Expands applicability beyond SRFs and WIFIA
- Requires Agencies to identify and report “deficient“ programs
- Requires full compliance within 6 months of enactment (May 14, 2022)
- Requires waiver requests be submitted to OMB after Agency review and posted on OMB website before final approval

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BABA Guidance

Guidance from OMB Issued April 18, 2022

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 Laws[1] 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 agency[2] 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/executive-order-on-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.

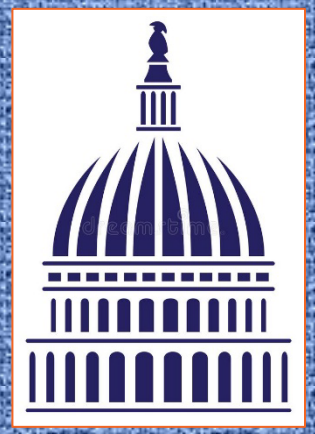
[2] For the purposes of this guidance, the terms "Federal agency" and "agency" mean any authority of the United States that is an "agency" (as defined in section 3502 of title 44, United States Code), other than an independent regulatory agency (as defined in that section). IIJA, § 70914(a).

[3] IIJA, § 70914(a).

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

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BABA Guidance



"Project" means:

- Any activity related to the construction, alteration, maintenance, or repair of infrastructure in the U.S.

"Buy America Preference" means:

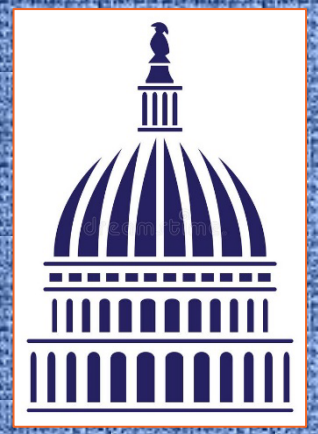
- All iron and steel used in the project are *produced* in the United States;
- All *manufactured products* used in the project are *produced* in the United States;
- All *construction materials* used in the project are *produced* in the United States.

"Construction Materials" means:

- Common construction materials used in public works infrastructure projects including 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, and drywall.

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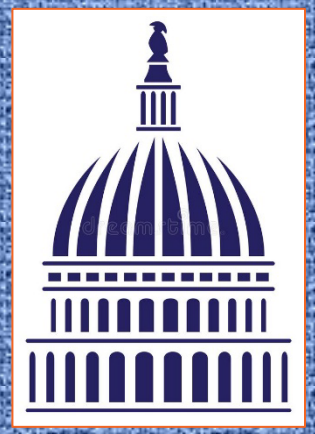


"Produced in the United States" means:

- 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% 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
  - In the case of construction materials, that all manufacturing processes for the construction material occurred in the U.S.

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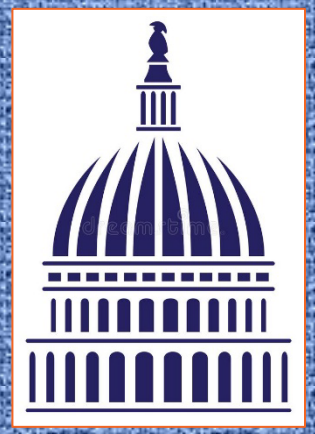


Waivers:

- Public Interest Waiver - applying the domestic content procurement preference would be inconsistent with the public interest;
- Nonavailability Waiver - types of iron, steel, manufactured products, or construction materials are not produced in the U.S. in sufficient and reasonably available quantities or of a satisfactory quality; or
- Cost Waiver - the inclusion of iron, steel, manufactured products, or construction materials produced in the U.S. will increase the cost of the overall PROJECT by more than 25%

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BABA Guidance



Waivers:

- 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;
- Provide a period of not less than 15 days for public comment on the proposed waiver.
- General applicability waivers which apply across multiple awards and can be product-specific or non-product specific must be posted for 30 days for public comment (need to consult with OMB). These waivers must be published in FR and must be reviewed every 5 years.
- Proposed waivers must also be posted to OMB website for public comment

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Current Supply Chain Challenges

- Price escalations
- Raw material price escalations - nickel used in stainless steel
- Inflation
- Increasing labor costs and workforce challenges
- Supply chain disruptions
- Delivery and time delays
- U.S. iron and steel capacity to meet increased demand
- Competition across all infrastructure sectors for finite supply and capacity

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Mitigation and Control Options

- Work with state SRF to determine if you meet small, disadvantaged, or affordability criteria to receive grants or loan forgiveness
- Work with consulting engineer to develop REALISTIC project cost estimates that factor in supply chain challenges and price escalations
- Combine multiple projects into one award to achieve economies of scale and reduce overhead
- Factor in new Buy America requirements – reach out in advance to manufacturers to assess compliance status
- Recommend combining all waiver requests for a project into one request
- Purchase and stockpile products in advance to hedge against inflation, price escalation, and availability issues

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Questions

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