

Build America, Buy America Act (“the Act”) Update Division of Local Assistance - Hot Topics Meeting



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Background: Buy America 1.0 vs 2.0 Comparison

BA 1.0: Buy America (Surface Transportation Assistance Act of 1982)	BA 2.0: Build America, Buy America Act ("the Act") (Infrastructure Investment and Jobs Act of 2021)
U.S.C. § 313 ; 23 C.F.R. § 635.410	Bipartisan Infrastructure Law BIL § 70914(a).
The Secretary of Transportation shall not obligate any funds unless steel, iron, and manufactured products used in such project are produced in the United States.	The Act requires that the head of each covered Federal agency shall ensure that "none of the funds made available for a Federal financial assistance program for infrastructure . . . 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.
Waivers: public interest, nonavailability, project cost > 25%)	Waivers: public interest, nonavailability, project cost > 25%). There is a moratorium on such waiver requests presently. Except the 25% by cost type.

Background: Buy America 2.0

- Infrastructure Investment and Jobs Act - November 15, 2021
- Office of Management and Budgets – Initial Guidance - April 18, 2022
- USDOT 180-Day Temporary Waiver for Construction Materials— May 19, 2022
- FHWA 1983 Manufactured Products Waiver

Buy America 2.0 Implementation

- Implementation Date – November 10, 2022
- Mandated for federal-aid risk projects
 - a) Projects containing fed-aid
 - b) Contract within the scope of the same NEPA document
 - c) Other phases that contain federal-aid
 - d) Desire to maintain future federal-aid eligibility
- Specification owners, authorized material lists, agency furnished material contracts
- Means of verification- Contractors must provide certificates of compliance

Buy America 2.0 Risks

- Interpretation of construction materials vs. manufactured products
- Raw source materials, surface treatments & coatings
- Supply vs. demand for newly covered Buy America materials
- Increased cost or delay impacts of domestic only supplies
- No effective Buy America waiver process
- Utility relocation agreements
- Recipients' compliance validation processes
- FHWA 1983 waiver (Buy America 3.0)

Buy America Implementation Tools

- Office Bulletin 22-07 Modified Buy America Requirements
LAPM 12.8 Federal Contract Requirements “Buy America”
Exhibit 12-G
- Additional OMB guidance
- FAQs for Buy America [Buy America 2.0 FAQ \(PDF\)](#)

Buy America Implementation Future Items

- FHWA training for District & HQ in Jan-Feb'23
- FHWA training for LPAs in Feb-Mar'23



Questions

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