

General Provisions/Guidelines	Trump Executive Orders	American Recovery and Reinvestment Act	Executive Order 14005 (Biden)	Buy America from the FAST Act and MAP-21	Infrastructure Investment and Jobs Act (IIJA)
<p>1933 Buy American Act</p> <ul style="list-style-type: none"> The Buy American Act, (41 U.S.C. § 10a-10d), applies to procurements of supplies and construction materials for the United States government. The Buy American Act is implemented by the Federal Acquisition Regulation (FAR, Part 25). May be applied to all direct U.S. federal procurement. The Buy American Act requires Federal agencies to procure domestic materials and products. Two conditions must be present for the Buy American Act to apply: <ul style="list-style-type: none"> (1) the procurement must be intended for public use within the United States; and (2) the items to be procured or the materials from which they are manufactured must be present in the United States in sufficient and reasonably available commercial 	<p>Ex. Ord. No. 13788. Buy American and Hire American (2017)</p> <ul style="list-style-type: none"> In order to promote economic and national security and to help stimulate economic growth, create good jobs at decent wages, strengthen our middle class, and support the American manufacturing and defense industrial bases, it shall be the policy of the executive branch to maximize, consistent with law, through terms and conditions of Federal financial assistance awards and Federal procurements, the use of goods, products, and materials produced in the United States. Every agency shall scrupulously monitor, enforce, and comply with Buy American Laws, to the extent they apply, and minimize the use of waivers, consistent with applicable law. 	<p>Section 1605</p> <ul style="list-style-type: none"> The Buy American provisions direct that, subject to certain exceptions, no Recovery Act funds may be used for a project for the construction, alteration, maintenance or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States. Only apply to iron, steel, and manufactured goods brought to the construction site for incorporation into a public building or public work. Products that do not fit the definition of manufactured goods are not covered. Services are not covered. The provisions only apply to projects for the construction, alteration, 	<ul style="list-style-type: none"> Executive Order 14005, Ensuring the Future is Made in All of America by All of America’s Workers. “Make Buy American Real” – closes loopholes by raising the domestic content threshold. The Buy American statute says products bought with taxpayer dollars must “substantially all” be made in the U.S. However, today, products could qualify if just 55%—just over half—of the value of their component parts was manufactured here. The NPRM proposes an immediate increase of the threshold to 60% and a phased increase to 75%. “Made in America Laws” is defined as all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or procurement that require or provide preference for the acquisition of goods and products produced in America. Directs the establishment of the Made in America Office within the Office of Budget Management (OMB) and specifies that the Director will be appointed by the Director of OMB. 	<ul style="list-style-type: none"> The FAST Act phases in an increased domestic content percentage requirement for rolling stock, as follows: - FY16 & FY17: more than 60% domestic content - FY18 & FY19: more than 65% domestic content - FY20 & beyond: more than 70% domestic content. For rolling stock purchases for which the average cost of the vehicle is more than \$300,000, the FAST Act allows the cost of steel or iron produced in the U.S. and used in the rolling stock frames or car shells to be included in the domestic content calculation, regardless of whether the frame or car shell is produced in the U.S. Alters the Buy America waiver process to include a requirement that USDOT/FTA must 1) certify that the steel, iron, or manufactured good is produced in the U.S. in a sufficient and reasonably available amount; 2) certify that the item produced in the U.S. is of a satisfactory quality; and 3) disclose the waiver denial 	<p>Title IX of IIJA – “Build America, Buy America” (BABA)</p> <ul style="list-style-type: none"> BABA imposes new domestic origin requirements and standards for iron, steel, and other manufactured and construction products required for federally aided public works infrastructure at state, local, and federal levels. This provision would apply to programs and materials that are currently subject to Buy America laws <u>and</u> those that are not The statutory authority provided in this provision is not limited to funds appropriated and authorized by IIJA, but instead directs the application of Buy America laws to all federally aided infrastructure programs that will have enduring, permanent impacts. Waivers that have been available under Buy America laws in the past are authorized in this provision in cases where <ul style="list-style-type: none"> Applying the Buy America requirement would be inconsistent with public interest The quantity of construction materials necessary is not readily available in sufficient quantities domestically

<p>quantities of a satisfactory quality.</p> <ul style="list-style-type: none"> The provisions of the act may be waived if the head of the procuring agency determines the act to be inconsistent with the public interest or the cost of acquiring the domestic product is unreasonable. Contracts awarded by State and local authorities under Federal grant programs are not covered by the act unless authorizing statutes explicitly provide for application of the act. Problems in administering the act involve definitions of "substantially all" of the components and definitions of "manufactured in the United States." <p>Additional General Guidelines</p> <ul style="list-style-type: none"> Buy American rules stretch across a range of agencies and programs, those include: the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Federal 		<p>maintenance or repair of public buildings or public works funded by the Recovery Act.</p> <ul style="list-style-type: none"> The interim rule applies Sec. 1605 to any building/work that is constructed, altered, repaired, or maintained with Recovery Act funds without regard to title. ARRA Buy American rules apply to projects funded by the ARRA and will only last as long as the \$275 billion in federal contracts, grants and loans are being spent. In order to qualify for an unreasonable cost waiver, the use of a U.S. domestic product must increase the total cost of the project by 25%. The Buy American provisions of the Recovery Act for financial assistance are implemented by guidance issued by the Office of Management and Budget, found at 2 C.F.R. Part 176, Subpart B. Recovery Act-funded U.S. government 	<ul style="list-style-type: none"> Allows for waiver requests, to be submitted to the Made in America Office. Requires Director of the Made in America office to publish a list of the information that granting agencies shall include when submitting descriptions of proposed waivers and justifications. Requires the Administrator of General Services to develop a public website that shall include information on all proposed waivers and whether those waivers have been granted. Requires agencies to partner with the Hollings Manufacturing Extension Partnership (MEP) to conduct supplier scouting. Within 180 days of the order, the heads of each agency shall submit a report on its implementation of Made in America Laws, the agency's ongoing use of any longstanding or nationwide waivers of those laws, and recommendations for how to future effectuate the policy set forth to the Made in America Director. 	<p>and accompanying rationales on the DOT website.</p> <ul style="list-style-type: none"> For purposes of qualifying for the General Public Interest Waiver for Small Purchases, the FAST Act defines a Small Purchase as a purchase of \$150,000 or less. As part of MAP-21, Congress sought to prevent sponsors of highway projects from segmenting a project into smaller parts, some federally funded and some not, so as to free some segments of the project from Buy America requirements. To accomplish this, MAP-21 (Section 1518) specified that FHWA Buy America requirements apply to all contracts eligible for assistance within the scope of a project's National Environmental Policy Act (NEPA) document if at least one contract for the project is federally funded 	<ul style="list-style-type: none"> Where the inclusion of domestically produced construction materials will increase the cost of the overall project by 25% or more The bill defines "produced in the United States" to mean, "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 United States." New to this provision, BABA will impose Buy America requirements on construction materials that are metals or alloys that do not contain iron. For manufactured products, the origin standards state that a product is deemed to have been produced in the US if the product was manufactured in the US and the cost of the product's components mined, produced, or manufactured in the US exceeds 55% of the total cost of components. Upon enactment, the Office of Management and Budget is directed to issue federal guidance to Federal agencies to identify programs that have "deficient" Buy America coverage, defined as those not currently subject to Buy America requirements at all or that are subject to limited requirements.
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<p>Aviation Administration (FAA), the clean water state revolving fund (CWSRF) and drinking water state revolving fund (DWSRF) programs, and the Surface Transportation Assistance Act (STAA).</p> <ul style="list-style-type: none">• A side-by-side comparing Buy America requirements can be found here from the various agencies		<p>procurements for public building/public works projects requiring iron, steel or manufactured goods, are also governed by the Buy American provisions of the Recovery Act. These regulations are found in the FAR at 48 C.F.R. § 25.6.</p>			<ul style="list-style-type: none">• Within 60 days, federal agencies are required to submit a report to OMB and appropriate congressional committees identifying all financial assistance programs for infrastructure administered by the agency and identifying the Buy America requirements that should be applied to these programs• Federal agencies must begin applying Buy America preferences when administering financial assistance within 180 days.• The BABA provision includes a “Make it in America” section.• Per the legislative text, the duties of the Made in America director are:<ul style="list-style-type: none">• to maximize and enforce compliance with domestic preference statutes• develop and implement procedures to review waiver requests or inapplicability requests related to domestic preference statute,• prepare required reports• ensure that any relevant personnel are appropriately trained• conduct the review of reciprocal defense agreements• ensure that federal agencies, federal financial assistance recipients, and
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					<p>the Hollings Manufacturing Extension Partnership partner with each other, and support executive branch efforts to develop and sustain a domestic supply base</p> <ul style="list-style-type: none"> • Additional requirements in the text include a report to Congress from the office within one year of enactment, and a review of the process of the office not later than 180 days of enactment.
<p>Chapter 83 Buy American:</p> <p>41 U.S. Code § 8302.American materials required for public use:</p> <p>In General.— (1)Allowable materials.—Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, shall be acquired for public use unless the head of the department or independent establishment concerned determines their acquisition to be inconsistent with the</p>	<p>Ex. Ord. No. 13858. Strengthening Buy-American Preferences for Infrastructure Projects (2019)</p> <ul style="list-style-type: none"> • Within 90 days of the date of this order [Jan. 31, 2019], the head of each executive department and agency (agency) administering a covered program shall, as appropriate and to the extent consistent with law, encourage recipients of new Federal financial assistance awards pursuant to a covered program to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products 	<p>48 CFR § 25.602-1 - Section 1605 of the Recovery Act.</p> <p>(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless the public building or public work is located in the United States and -</p> <p>(1) All of the iron, steel, and manufactured goods used as construction material in the project are produced or manufactured in the United States.</p> <p>(i) All manufactured construction material must be</p>			

<p>public interest or their cost to be unreasonable.</p> <p>(2) Exceptions.—This section does not apply—</p> <p>(A) to articles, materials, or supplies for use outside the United States;</p> <p>(B) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and</p> <p>(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.</p>	<p>produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable against such Federal financial assistance award.</p> <ul style="list-style-type: none"> • Within 120 days of the date of this order, the head of each agency administering a covered program shall identify in a report to the President, through the Assistant to the President for Trade and Manufacturing Policy, any tools, techniques, terms, or conditions that have been used or could be used, consistent with law and in furtherance of the policy set forth in section 1 of this order, to maximize the use of iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in contracts, sub-contracts, purchase orders, or sub-awards that are chargeable against Federal financial assistance awards for infrastructure projects. In preparing this report, the agency head shall take care to analyze 	<p>manufactured in the United States.</p> <p>(ii) Iron or steel components.</p> <p>(A) Iron or steel components of construction material consisting wholly or predominantly of iron or steel must be produced in the United States. This does not restrict the origin of the elements of the iron or steel, but requires that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives.</p> <p>(B) The requirement in paragraph (a)(1)(ii)(A) of this section does not apply to iron or steel components or sub components in construction material that does not consist wholly or predominantly of iron or steel.</p> <p>(iii) All other components. There is no restriction on the origin or place of production or manufacture of components or sub components that do not consist of iron or steel.</p> <p>(iv) Examples.</p> <p>(A) If a steel guardrail consists predominantly of</p>			
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	<p>whether covered programs within the agency head's jurisdiction would support, through terms and conditions on new Federal financial assistance awards under such covered programs, the imposition of a requirement to use iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in contracts, sub-contracts, purchase orders, or sub-awards that are chargeable against such Federal financial assistance awards.</p>	<p>steel, even though coated with aluminum, then the steel would be subject to the section 1605 restriction requiring that all stages of production of the steel occur in the United States, in addition to the requirement to manufacture the guardrail in the United States. There would be no restrictions on the other components of the guardrail.</p> <p>(B) If a wooden window frame is delivered to the site as a single construction material, there is no restriction on any of the components, including the steel lock on the window frame; or</p> <p>(2) If trade agreements apply, the manufactured construction material shall either comply with the requirements of paragraph (a)(1) of this subsection, or be wholly the product of or be substantially transformed in a Recovery Act designated country;</p> <p>(b) Manufactured materials purchased directly by the Government and delivered to the site for incorporation into the project shall meet the same domestic source requirements as specified for manufactured construction</p>			
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		<p>material in paragraphs (a)(1) and (a)(2) of this section; and (c) A project may include several contracts, a single contract, or one or more line items on a contract.</p>			
<p>41 U.S. Code § 8303. Contracts for public works:</p> <p>(a) In General.—Every contract for the construction, alteration, or repair of any public building or public work in the United States shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers shall use only—</p> <p>(1) unmanufactured articles, materials, and supplies that have been mined or produced in the United States; and</p> <p>(2) manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States.</p> <p>(b) Exceptions.—</p> <p>(1) In general.—This section does not apply—</p> <p>(A) to articles, materials, or supplies for use outside the United States;</p>	<p>Ex. Ord. No. 13881. Maximizing Use of American-Made Goods, Products, and Materials (2019)</p> <ul style="list-style-type: none"> • In Executive Order 10582 of December 17, 1954, President Eisenhower established that materials shall be, for purposes of the Buy American Act, considered of foreign origin if the cost of the foreign products used in such materials constitutes 50 percent or more of the cost of all the products used in such materials. He also established that, in determining whether the bid or offered price of materials of domestic origin is unreasonable or inconsistent with the public interest, the executive agencies shall either (1) add 6 percent to the total bid or offered price of materials of foreign origin, or (2) add 10 				

<p>(B)if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and</p> <p>(C)to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.</p> <p>(2)Particular article, material, or supply.—If the head of the department or independent establishment making the contract finds that it is impracticable to comply with subsection (a) for a particular article, material, or supply or that it would unreasonably increase the cost, an exception shall be noted in the specifications for that article, material, or supply and a public record of the findings that justified the exception shall be made.</p> <p>(3)Inconsistent with public interest.—Subsection (a) shall be regarded as requiring the</p>	<p>percent to the total bid or offered price of materials of foreign origin less certain specified costs as follows. Where the foreign bid or offer is less than \$25,000, applicable duty is excluded from the calculation. Where the foreign bid or offer is more than \$25,000, both applicable duty, and all costs incurred after arrival in the United States, are excluded from the calculation.</p> <ul style="list-style-type: none"> • The policies described in section 1(b) of this order were adopted by the Federal Acquisition Regulatory Council (FAR Council) in the Federal Acquisition Regulation (FAR), title 48, Code of Federal Regulations. The FAR should be reviewed and revised, as appropriate, to most effectively carry out the goals of the Buy American Act and my Administration's policy of enforcing the Buy American Act to its maximum lawful extent. I therefore direct the members of the FAR Council to consider 				
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<p>purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the department or independent establishment concerned determines their purchase to be inconsistent with the public interest or their cost to be unreasonable.</p>	<p>measures that may better effectuate this policy.</p> <ul style="list-style-type: none">• An amendment to the applicable provisions in the FAR that would provide that materials shall be considered to be of foreign origin if:<ul style="list-style-type: none">○ for iron and steel end products, the cost of foreign iron and steel used in such iron and steel end products constitutes 5 percent or more of the cost of all the products used in such iron and steel end products; or○ for all other end products, the cost of the foreign products used in such end products constitutes 45 percent or more of the cost of all the products used in such end products.				
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