



*"Buy America laws create demand for domestically produced goods, helping to sustain and grow domestic manufacturing and the millions of jobs domestic manufacturing supports..."* – BUILD AMERICA, BUY AMERICA ACT

The Build America, Buy America Act was signed into law November 15, 2021 as part of the "Infrastructure Investment and Jobs Act" (IIJA; P.L. 117-58). Implementing these provisions will help bolster the U.S. industrial base and supply chains, support American workers and firms, drive new investment, and support the creation of good-paying jobs.

The Build America, Buy America Act provisions apply to all new NSF-funded financial assistance awards or ongoing awards that receive additional funding after May 14, 2022.



## WHAT ARE THE BUILD AMERICA, BUY AMERICA ACT'S REQUIREMENTS?

- ▶ The Build America, Buy America Act focuses on maximizing the federal government's use of services, goods, products, and materials produced and offered in the United States. The Act requires that all iron, steel, manufactured products, and construction materials used in federally funded infrastructure projects must be produced in the United States.
- ▶ Infrastructure includes research facilities, labs, buildings, structures, and facilities in the United States.
- ▶ Scientific instrumentation on NSF-funded projects is considered outfitting of the facility and not integral to its construction so the Build America, Buy America provisions would not apply. Careful consideration should be given to the interfaces between scientific instrumentation and the base facility.
- ▶ Software is not considered a manufactured product. However, components of a cyberinfrastructure backbone, such as hardware, fiberoptics and cabling, would fall under the Build America, Buy America provisions. Semiconductors and chips would not be considered construction materials under the Build America, Buy America definitions.



## HOW CAN I APPLY FOR A BUILD AMERICA, BUY AMERICA WAIVER?

- ▶ When necessary, award recipients may apply for a waiver from the Build America, Buy America requirements. NSF may waive the application of the domestic content procurement preference in the case of one of three exceptions:
  - Public interest
  - Nonavailability
  - Unreasonable cost
- ▶ Waivers should be used judiciously. Award recipients must first take proactive steps to identify qualifying Build America, Buy America products, materials, and supplies for their projects.
- ▶ Waivers should also be limited to specific projects or time periods, targeted to only the products necessary, and when appropriate, conditional, to maximize the use of American-made items.
- ▶ Once you submit a waiver request to NSF, your cognizant Program Officer and Grants and Agreements Officer initiates a formal review of the request. NSF will post the waiver request on the NSF website for 15 days for public comments. NSF will then submit the agency's decision to the Office of Management and Budget's, Made in America Office to make a final determination. The NSF website will be updated, and you will be notified of the decision.



## HOW DO I KNOW IF BUILD AMERICA, BUY AMERICA APPLIES TO MY NSF AWARD?



## Definitions

**Components** are defined in 48 CFR § 25.003 as the articles, materials, or supplies incorporated directly into the end product(s), or any succeeding definition.

**Construction Materials** are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, paint, and drywall.

**Infrastructure** means public infrastructure projects which serve a public function. This includes at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy -including electric vehicle (EV) charging.

**Manufactured Products** are items used for an infrastructure project that are not primarily of iron or steel; construction materials; cement and cementitious materials' aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

**Primarily of iron or steel** means greater than 50% iron or steel, measured by cost.

**Determining the cost of manufactured products:** The cost of a component is based on whether it is purchased or manufactured when it is incorporated into the end product. When determining what costs should be considered for the purchase of manufactured components or end products, use the definitions at 48 CFR § 25.003.

**Manufacturing processes for construction materials:** The Buy America Preference applies to construction materials used in infrastructure projects listed on MadeinAmerica.gov. Each class of materials is followed by an attendant definition of "produced in the United States." When determining the types of manufacturing processes for construction materials produced in the United States use the standards listed on MadeinAmerica.gov.

**Project** is any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States.

**Produced in the United States** means the following, for:

**Iron and steel:** All manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

**Manufactured products:** The product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States 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 of the manufactured product has been established under applicable law or regulation.

**Construction Materials:** All manufacturing processes for the construction material occurred in the United States.



## Construction Material Standards listed on MadeinAmerica.gov

**Non-ferrous metals:** All manufacturing processes, from initial smelting through final shaping, coating, and/or assembly, occurred in the United States.

**Plastic and polymer-based products:** All manufacturing processes, from mixing and heating of polymer inputs through extrusion, wrapping, cutting, and/or cooling, occurred in the United States.

**Glass:** All manufacturing processes, from initial batching and melting of raw materials through annealing/cooling and cutting, occurred in the United States.

**Lumber:** All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

**Drywall:** All manufacturing processes, from initial blending of gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

**Coatings (paint, stain, etc. applied at the work site):** All manufacturing processes, from initial mixing of pigments, resin, solvents, and additives through final canning or other packaging, occurred in the United States.

**Fiber optic cable:** All manufacturing processes, from the initial preform fabrication stage through fiber stranding and jacketing, occurred in the United States.

**Optical fiber:** All manufacturing processes, from the initial preform fabrication stage through fiber stranding, occurred in the United States.

**Clay brick:** All manufacturing processes, from initial tempering and forming through cooling and de-hacking, occurred in the United States.

**Composite building materials:** All manufacturing processes, from initial combination of constituent materials until the composite material is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.

**Engineered wood products:** All manufacturing processes, from initial debarking through pressing, trimming, and/or sanding of glued sheets or boards, occurred in the United States. Encompasses plywood, engineered wood flooring, fiberboard.

