

FTA

FEDERAL TRANSIT ADMINISTRATION

Overview of FTA Buy America Requirements

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Federal Cross-Cutting Requirements

FTA Master Agreement (FTA MA(29)) sets forth the standard terms and conditions that apply to each FTA grant awarded. An FTA recipient must comply with all applicable federal laws, regulations, and other requirements, such as guidance. To assure compliance, the Recipient must take measures to assure that other participants in its grant agreements (e.g., Third Party Participants) comply with applicable federal laws, regulations, and requirements.

FTA may take enforcement action if the Recipient or a Third Party Participant violates an applicable federal law, regulation, or requirement, or does not follow applicable federal guidance.

Standard Federal requirements include: Davis-Bacon, civil rights requirements such as Equal Employment Opportunity, Title VI of the Civil Rights Act, and Disadvantaged Business Enterprise, the Uniform Relocation and Real Property Acquisition and Policies Act, various environmental laws, and Buy America.

Buy America Overview

- FTA's Buy America statute – 49 U.S.C. 5323(j) applies at the **project level**, and to all **federally assisted procurements**
- Requires items to be **produced in the United States**
- FTA's Buy America regulation defines “produced in the United States” differently for the following 3 categories of items:
 - **Structural steel & iron**
 - **Manufactured products**
 - **Rolling stock**

Steel & Iron

- **Rule: All production must occur in the United States (i.e., melting stage)**
- Steel & Iron products include *bridges, structures, and trackwork including turnouts, running rail, and contact rail*
- Does not apply to manufactured products that happen to incorporate components made of steel or iron (e.g., electrical cabinets, bus shelter frames)

Manufactured Products

- **Rule:**
 - 1. All manufacturing processes for the product must take place in US; and**
 - 2. All of the components of the product must be of US origin (manufactured in the United States)**
- The manufactured products rule is a “catchall” and includes *anything procured that is not steel, iron, or rolling stock*

Rolling Stock Waiver

- **Rule:** The rolling stock rule is a “waiver” from the manufactured product requirement (100% U.S. components) and requires:
 1. **>70% U.S. components and subcomponents as a percentage of the cost of all components**
 2. **Final assembly in the United states**
- Rolling stock includes *vehicles (buses, locomotives, and ferry boats) as well as train control, communication, and traction power equipment*

Rolling Stock Auditing

- FTA's statute requires the **recipient** to conduct a pre-award and post-delivery audit of revenue rolling stock purchases for compliance with:
 - Government motor vehicle safety requirements,
 - Buy America requirements, and
 - Bid Specifications.
- Independent inspections and review are required
- A manufacturer certification is not sufficient.

Statutory Waivers

- **Public Interest**

- Applying Buy America is “inconsistent with the public interest”

- **Non-availability**

- The item is not produced in the United States in a **sufficient and reasonably available amount**, or is not of a **satisfactory quality**
 - Requires notice & comment in the FED. REG.
 - FTA **must** grant the waiver, or **identify** a qualifying domestic source

- **Price-differential**

- Use of domestic material increases the cost of the **overall project** by >25%

- **Small Purchase**

- “Purchases” of not more than \$150,000, including ancillary costs such as installation and warranty

Executive Order 14005 (1/28/2002)

Ensuring the Future is Made in All of America by All of America's Workers

- Intended to maximize the use of goods, products, and materials produced in, and services offered in, the United States
- Creation of Made in America Office (OMB)
- Establishment of uniform waiver application process for non-availability waivers:
 - Before granting a waiver, provide the Made in America Director with a description of the proposed waiver and a detailed justification;
 - Made in America Director will notify FTA of its decision to grant or deny the waiver;
 - Waiver requests are publicly posted on a GSA-hosted website

Regulatory Update

49 CFR Part 661:

- FTA's Buy America regulation has not undergone significant amendment since SAFETEA-LU (2007)
- FTA currently is considering edits to align the rule with FAST Act and MAP-21 amendments to FTA's Buy America statute and Bipartisan Infrastructure Law provisions applicable to FTA, as well as updates to simplify Buy America requirements
- FTA is considering opportunities to obtain stakeholder input prior to issuance of Notice of Proposed Rulemaking

Build America, Buy America Act

- The Build America, Buy America Act (BABA) was enacted as part of the Infrastructure Investment and Jobs Act on November 15, 2021. BABA creates preferences for products made in the United States to be used on infrastructure projects funded by Federal agencies, including FTA.
- BABA requires that no Federal financial assistance 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.
- BABA applies to FTA's programs only to the extent an existing domestic content procurement preference consistent with BABA does not already apply. BABA does not affect domestic content requirements under FTA's Buy America program where those requirements meet or exceed the requirements of BABA.
- FTA's Buy America requirements meet or exceed BABA's requirements applicable to steel and iron, manufactured products, and rolling stock.

BABA – Construction Materials

Because FTA's Buy America statute and regulations do not have an existing standard for construction materials, FTA will implement requirements for all manufacturing processes for construction materials to occur in the United States, consistent with the Office of Management and Budget (OMB) direction. An OMB memorandum to Federal agencies, [M-22-11](#) (April 18, 2022), provides initial implementation guidance for construction materials. FTA expects additional guidance from OMB and/or the Department of Transportation.

U.S. Department of Transportation recently issued a proposed 180-day waiver of BABA's requirements for construction materials, to prepare for compliance with the new requirements. The comment period closed on May 13, 2022, and comments received can be viewed at <http://www.regulations.gov>, docket number [DOT-OST-2022-0047](#).