



U.S. Department
of Transportation
**Federal Transit
Administration**

Administrator

1200 New Jersey Avenue, SE
Washington, DC 20590

November 7, 2022

Dear Colleague:

The purpose of this letter is to remind project sponsors of an upcoming change regarding Buy America requirements for projects funded with Federal Transit Administration (FTA) financial assistance. For grants obligated on or after November 10, 2022, FTA will add construction materials to the categories of products that must be manufactured in America on federally funded transit infrastructure projects. I also wish to call your attention to two Buy America waivers the U.S. Department of Transportation (DOT) proposed late last week and invite your input on DOT's proposals.

On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law, which includes the Build America, Buy America Act (BABA), [Public Law 117-58, div. G §§ 70901-27](#). The law not only makes an historic investment in American transportation—from roads and bridges to rail to transit—but also ensures that the future of American transportation is made in America. Specifically, BABA expands the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. For projects funded by FTA grants, BABA requires that all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. To provide an opportunity for grantees to adjust to the new construction materials requirement, DOT issued a temporary [waiver](#) on May 19, 2022, delaying the effective date of BABA's construction materials requirement for all DOT programs to November 10, 2022.

Following the expiration of the temporary waiver on November 10, every award FTA obligates will require that any construction materials procured under the award be manufactured in the United States.

Awards that FTA obligated before May 14, 2022, are *not* affected by this construction materials requirement because they are not covered by BABA. Awards that FTA obligated on or after May 14 and before November 10 also are *not* affected by this requirement, because they are covered by the temporary waiver DOT issued in May. A contract for a project that will be federally funded solely by one or more pre-November 10 awards need not comply with the new construction materials requirement, regardless of when the project sponsor executes the contract.

Any FTA award obligated on or after November 10, however, will be subject to the BABA requirement that construction materials used on those projects be produced in the United States, and the costs for construction materials that are not manufactured in the United

States will be ineligible for reimbursement under the grant, regardless of when the project sponsor incurred the cost. FTA recognizes that some project sponsors have already contracted for, or issued solicitations for, non-U.S. manufactured construction materials, with the expectation of receiving reimbursement from FTA grants obligated after November 10. To address this situation, DOT has proposed a waiver that, if it becomes final, will provide relief to some project sponsors in this situation. Any waiver, as currently proposed, would not apply to any grants obligated between November 10 and when the proposed waiver is made final, and any such grants will require compliance with the BABA construction materials requirement.

Project sponsors should look to the U.S. Office of Management and Budget's (OMB) [Memorandum M-22-11](#), "Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure" (April 18, 2022), for an explanation of the standards FTA will apply to construction materials beginning November 10. Neither the OMB memorandum nor any binding DOT or FTA condition requires a project sponsor to use a specific mechanism to ensure the construction materials used in its project are manufactured in the United States, but FTA recommends project sponsors follow FTA's well-established Buy America certification requirements for steel, iron, and manufactured products as an example. [49 CFR 661.6](#).

I expect Federal agencies may provide further guidance and refinements in the future, as we all work together to implement these new standards and as you encounter questions we could not anticipate. FTA is ready to help our grantees manage this transition, with the combined goal of delivering high quality public transportation projects and, in the words of BABA, "ensuring a commonsense procurement preference for the materials and products produced by companies and workers in the United States."

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Finally, as I noted previously, earlier this week, DOT published two proposed Buy America waivers for public review and comment. You can find each of the proposals here: <https://www.transportation.gov/office-policy/transportation-policy/made-in-america>.

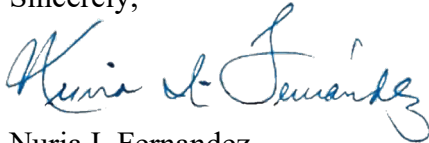
The first proposed waiver is intended to ease the transition to applying Buy America to construction materials. It would make certain contracts for non-U.S. manufactured construction materials eligible for FTA awards obligated on or after November 10. Please note, however, that if the proposed waiver is adopted in its current form, it is unlikely to be in effect before November 10, and any grants obligated after November 10 and before the waiver is finalized would not be covered by the proposed waiver. In addition, although not proposed to be included in the waiver, DOT is requesting information on potential impacts for projects with existing grant awards for which additional Federal funds will be awarded in future grants or amendments, and for which not all contracts including construction materials have been awarded by the recipient with pre-award authority. For example, this could include a Capital Investment Grant project with a Full Funding Grant Agreement for which not all funds have yet been obligated.

The other DOT proposal would affect Buy America generally, not just for construction materials, by waiving Buy America for certain de minimis costs, small grants, and minor components.

I hope that each of you will have the opportunity to read these proposals and share your comments by the November 20, 2022, deadline. Wherever possible, we encourage you to provide specific, detailed information in response to the questions posed in the waivers.

Should you have any questions about the changes that will affect construction materials after November 10, please contact the regional counsel for the FTA [region](#) in which you are located, or jason.luebbers@dot.gov. If you have any questions about DOT's proposed waivers, please use the respective points of contact named in each proposed waiver.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nuria I. Fernandez".

Nuria I. Fernandez

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. The public should refer to FTA's statutes and regulations for applicable requirements.