

THE BOND BUYER

Buy America policy may boost already-inflated construction costs, transportation advocates warn

By

[Caitlin Devitt](#)

Published

April 18, 2022, 2:40 p.m. EDT

The White House Monday detailed its new policy requiring that U.S.-made materials be used in all new infrastructure projects, a cornerstone of President Joe Biden's infrastructure law that some transportation advocates warn may increase costs and delays.

The Build America, Buy America Act in the \$1.2 trillion Infrastructure Investment and Jobs Act aims to boost U.S. manufacturing by requiring that all infrastructure projects that use federal funds – from highways to passenger rail, airports and water systems – must use construction products and materials produced in the U.S.

The provision builds on existing Made in America laws, which have applied to iron, steel and various manufacturing products, by expanding it to construction materials and revamping the waiver process.

The Buy America initial [guidelines](#) released Monday are a key consideration for states and cities that are starting to craft budgets and timelines for projects funded by the IIJA. The new provision applies to all infrastructure projects that use federal funding, not just IIJA projects.

The 17-page guidance outlines new requirements for waivers, including that the U.S. Department of Transportation may approve a waiver if it believes compliance would be "inconsistent with the public interest" or increase the project's cost by at least 25%.

Surface transportation advocates, while saying they support Buy America's policy goals of strengthening U.S. manufacturing, warned it could drive up costs and bring delays to the rollout of the IIJA.



“Switching on these expanded requirements with no lead time will likely lead to significant project delays and cost inflation as agencies scramble to locate domestic product and quickly deplete existing supplies,” AASHTO President Shawn Wilson said about a swift implementation of the IIJA’s Buy America policy. **Louisiana Department of Transportation and Development**

“If Buy America is truly applied to all ‘...iron, steel, manufactured products, or construction materials,’ it will take years before everything is domestically available,” American Association of State Highway and Transportation Officials President Shawn Wilson said in an April 1 letter to Transportation Secretary Pete Buttigieg.

“Switching on these expanded requirements with no lead time will likely lead to significant project delays and cost inflation as agencies scramble to locate domestic product and quickly deplete existing supplies.”

The group called for phasing in the policy to help minimize disruption in the beginning, and called for the Federal Highway Administration to conduct a market study on common highway project materials to determine where the most flexibility will be needed.

AASHTO also said the Buy America provision is the biggest short-term obstacle to the development of a national electric vehicle charging network, a top Biden priority.

Construction costs for highway and street projects have spiked 21% over the past year and a swift implementation of Buy America could worsen that trend, said the American Road & Transportation Builders Association.

“Short-term implementation of the new Buy America provisions has the potential of exacerbating these already-difficult market conditions,” ARTBA said in an April 13 letter to Celeste Drake, the Office of Management and Budget’s Made in America Director. “Even under more typical conditions, the significant tasks of expanding Buy America’s statutory reach and revamping the waiver process would necessitate a measured, yet determined, approach.”

ARTBA said guidance should allow for a “common sense” approach on a project level to help minimize potential cost increases and delays, particularly with smaller, low-cost component items like screws and light bulbs, and pushed for a speedy waiver-review process.

Much of the 17-page guidance released Monday focuses on situations in which waivers may be used. The White House outlined three categories: a public interest waiver, where the domestic procurement process would be inconsistent with the public interest; a non-availability waiver, when iron, steel or other materials are not produced in the U.S. in sufficient quantities or of a satisfactory quality; and an unreasonable cost waiver, when the provision would rive up the cost of an overall project by more than 25%.

Ohio Democrat Sen. Sherrod Brown, who wrote the Build America legislation, on April 13 sent a letter to OMB Director Shalanda Young urging her to be “vigilant regarding any noncompliance that allows American workers’ tax dollars to support their foreign competition.”

[Caitlin Devitt](#)