

## Domestic Content Requirements for Infrastructure Projects

### Domestic Content Incentives

Inflation Reduction Act of 2022	
<p><i>Energy Infrastructure Projects</i></p>	<p>Companies building a wide range of energy-related projects could receive additional tax credits for incorporating a significant percentage of domestically sourced iron, steel, and manufactured components into the project's construction.</p> <p>The Production Tax Credit (PTC) is a long-standing tax credit based on kilowatt hours (kWh) of electricity produced at renewable energy facilities. Under the IRA, if a taxpayer claims a PTC, they could receive an additional credit of 10% of the PTC amount for using domestically sourced iron, steel, and manufactured components.</p> <p>The Investment Tax Credit (ITC) is a similar tax credit for investments in energy-related property, including energy recovery property, microturbines, offshore wind, and solar properties. If an entity qualifies for the ITC, the domestic content bonus credit is 2 percentage points (or 10 percentage points if applicable wage and workforce requirements also are met).</p>
	<p>To qualify for either credit, the company must certify that the iron, steel, and manufactured products that are components of the applicable energy facilities, were produced domestically. To be "produced domestically":</p> <ul style="list-style-type: none"> <li>• The iron and steel products used in projects must be manufactured in the U.S. (i.e., all manufacturing processes occurred in the U.S.); AND</li> <li>• For other manufactured products to qualify, the total cost of the manufactured products mined, produced, or manufactured in the U.S. must exceed 40% of the total cost of components (this threshold raises to 55% after 2026). The threshold for offshore wind projects currently is 20% (raising to 27.5% in 2026, with a steady rise to 55% by 2028).</li> </ul>

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Infrastructure Investment and Jobs Act	
<p><i>Infrastructure Projects</i></p>	<p>Build America, Buy America provisions of the IIJA expanded domestic preference requirements for infrastructure projects funded by federal grants, such as programs for the expansion of electrical power grids and broadband infrastructure. The IIJA also expanded the scope of goods covered by traditional Buy America requirements to include certain metals (such as copper), plastic and polymer-based items, glass, and other construction material.</p> <p>These requirements are applicable to infrastructure projects, including projects for roads, highways, bridges, public transportation, dams, ports, harbors, railroads, freight facilities, airports, water systems (drinking and wastewater), electrical transmission facilities, utilities, broadband infrastructure, and buildings/real property.</p> <p>All infrastructure projects funded by Federal grants are required to meet these domestic content requirements absent waiver.</p>
	<p>Creates a "domestic content procurement preference" wherein no funding amounts may be obligated to a project unless: (1) all iron and steel used in the project is produced in the U.S.; (2) the manufactured products used in the project are produced in the U.S.; or (3) the construction materials used in the project are produced in the U.S.</p> <p>For iron or steel products, "all manufacturing processes, from the initial melting stage through the application of coatings" must occur in the U.S.</p> <p>For manufactured products, (1) the end product must be manufactured in the U.S.; and (2) the cost of components that are mined, produced, or manufactured in the U.S. must be greater than 55% the total cost of all components.</p> <p>For construction, all manufacturing processes for the construction material must occur in the U.S.</p>
American Iron and Steel (AIS) Requirements	
<p><i>Wastewater and Drinking Water Projects</i></p>	<p>Applicable to water programs like EPA's Clean Water State Revolving Fund and Drinking Water State Revolving Fund, and the USDA's Water and Environmental Programs, these requirements provide that "all of the iron and steel products used in the project [must be] produced in the United States."</p> <p>Iron and steel products are those made primarily of iron or steel (greater than 50% iron or steel, measured by cost) that are permanently incorporated into the public water system or treatment works.</p> <p>All projects funded under these programs are required to meet these domestic content requirements.</p>
	<p>To be "produced in the United States," all manufacturing processes for the iron and steel products, including application of coatings, must take place in the U.S., with the exception of metallurgical processes involving refinement of steel additives. Manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the U.S. for any part of the manufacturing process, it becomes foreign source material.</p>
USDA's Rural Utilities Service Buy America Provisions (7 C.F.R. Part 1787)	
<p><i>Electrical-Related Projects, Including Broadband</i></p>	<p>The Rural Electrification Act of 1936 requires the USDA's Rural Utility Services' funding be used only to purchase products made in the U.S. or an eligible country (e.g., a "domestic product"). Any project funded by this program must comply with this domestic preference requirement.</p>
	<p>A domestic product is one that is: (1) manufactured in the U.S. or an eligible country; and (2) contains components manufactured in the U.S. or an eligible country consisting of more than 50% of the total cost of all components. Eligible countries can be found at 7 C.F.R. 1787.5</p>

Transportation Projects	<b>Federal Transportation Administration's Buy America Requirements (49 C.F.R. Part 661)</b>	
	Prohibits the Federal Transportation Administration (FTA) from obligating funds to a grant project unless all iron, steel, and manufactured products used in the project are produced in the United States. Any project funded by the FTA must comply with these domestic content requirements.	For iron and steel products, all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.  For manufactured products, (1) all manufacturing must occur in the U.S.; and (2) all components must be of U.S. origin, which means it is manufactured in the U.S. regardless of origin of subcomponents.
	<b>Federal Highway Administration's Buy America Requirements (23 U.S.C. § 313; 23 C.F.R. § 635.410)</b>	
	Prohibits Federal-aid highway construction projects from commencing unless the projects: (1) contain no permanently incorporated steel or iron materials; or (2) if steel or iron are to be used, all manufacturing processes must occur in the U.S. Any Federally-funded highway construction project must comply with these domestic content requirements.	For projects containing iron or steel, all manufacturing processes, including application of coatings, for these materials must occur in the U.S. Coating includes all processes that protect or enhance the value of the material to which the coating is applied.  A minimal amount of foreign iron or steel can be used if cost does not exceed 0.1% of total contract cost, or \$2,5000, whichever is greater.
	<b>Federal Aviation Administration's Airport Improvement Program Requirements (49 U.S.C. § 50101)</b>	
Requires that all steel and manufactured goods used in Airport Improvement Program (AIP) funded projects be produced in the U.S.	Recipients of funding must certify that all steel or manufactured products used on any portion of the AIP-funded project wholly are produced in the U.S. and are of 100% U.S. materials.	
	<b>Federal Railroad Administration's Buy America Requirements (49 U.S.C. § 22905)</b>	
	Prohibits Federal Railroad Administration funds from being expended unless the steel, iron, and manufactured goods used in the project are produced in the U.S. Any project funded by the Federal Railroad Administration program must comply with these domestic content requirements.	For iron and steel, all steel and iron manufacturing processes must take place in the U.S., except for any metallurgical processes involving refinement of steel additives.  For manufactured goods to be produced in the U.S.: (1) all manufacturing processes must take place in the U.S.; and (2) all components of the end product must be of U.S. origin. A component is of U.S. origin if it is manufactured in the U.S., regardless of origin of components.  Manufacturing means application of processes to alter the form or function materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly.
All Grant Programs	<b>Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200)</b>	
	The Uniform Guidance was created by OMB to provide a standard set of terms, conditions, and regulations governing Federal agency grant and other assistance programs. Though the Uniform Guidance is itself only guidance, many agencies have adopted these provisions as standard regulation.	Entities receiving funding from the Government are required, to the greatest extent practicable, to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the U.S.

## Domestic Content Requirements for Federal Procurement Contracts

Procurement Contracts	<b>Buy American Act (41 U.S.C. Ch. 83; FAR Part 25)</b>	
	Recently updated, the Buy American Act is applicable to traditional government contracts, not grant or financial assistance awards. The Buy American Act provides an evaluation preference to offerors proposing to use "domestic end products" in performance of their government contracts.	"Domestic end products" are those that are: (1) manufactured in the U.S., and (2) (a) for products made wholly or predominantly of iron or steel (more than 50% by cost), the domestic content must be greater than 95% of the total cost of the end product; or (b) for other manufactured goods, the cost of domestic components must exceed 60%* of the total product cost (unless the item is a commercially available off-the-shelf (COTS) item, for which the 55% requirement is waived).  *The domestic content requirement was raised to 60% on October 25, 2022, and will raise to 65% in January 2024, and 75% in January 2029.
	<b>Trade Agreements Act (19 U.S.C. Ch. 25; FAR Part 25)</b>	
	When the value of a procurement contract exceeds a certain dollar threshold, the Trade Agreements Act permits offerors to propose end products from certain designated countries with which the U.S. has a free trade agreement.	To be TAA compliant, a product must be: (1) wholly the growth, product or manufacture of a designated end country; (2) manufactured in the U.S.; or (3) substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

<sup>1</sup> Under the IJA, agencies are directed to ensure their domestic content requirements for infrastructure projects meet these minimum standards, but thus far agencies have been slow to update regulations or issue guidance, relying instead on issuing temporary waivers to the IJA's requirements. Where a company is uncertain which Domestic Preference provisions may apply, companies should seek clarification from the Federal Agency as to applicable requirements. Generally, where two regulatory regimes may be applicable, the more stringent requirement will apply.