



RESTORE Act

Frequently Asked Questions (FAQs)

Relating to the Direct Component Program – Application of Buy America Requirements

On February 12, 2016, the [RESTORE Act rule \(Treasury’s implementing regulations, 31 CFR Part 34\)](#) published by Treasury on December 14, 2015 became effective. The rule combines the comprehensive interim final rule and the Louisiana Parish Allocation Formula interim final rule, both of which were effective on October 14, 2014. On April 3, 2019, the [RESTORE Act final rule on administrative costs](#) was published in the Federal Register.

Table of Contents

Buy America Requirements – General Questions3

Q1. What is the Build America, Buy America Act?3

Q2. What is “infrastructure” under the Build America, Buy America Act?.....3

Q3. Does the Buy America Preference requirements set forth in section 70914 of the Build America, Buy America Act apply to Treasury’s RESTORE Act grant programs?4

Q4. Does the Buy America Preference requirements apply to every Direct Component award that includes construction activities?4

Q5. Federal financial assistance that are for “pre and post disaster or emergency response expenditures” are exempt from the application of Buy America Preference requirements outlined in section 70914 of the Build America, Buy America Act. Does the Direct Component grants qualify for this “post disaster” exemption?4

Q6. Do the Buy America Preference requirements apply to RESTORE Act grants which are made from the Gulf Coast Restoration Trust Fund not appropriated funds?4

Q7. Are there resources for the Direct Component grant recipients and subrecipients to identify available construction materials that comply with Buy America Preference requirements?.....5

Q8. Where can I find more information about Buy America Preference requirements?5

What Triggers Buy America Preference Requirements5

Q9. Would all funds proposed in the budget of a new Direct Component award for an infrastructure project, including third-party funds, be required to comply with the Buy America Preference requirements described in the Act?5

Q10. Would the Buy America Preference requirements apply to an existing Direct Component award for infrastructure made before May 14, 2022, if the recipient requires additional third-party funds to cover actual construction costs that are higher than those estimated at the time of award?5

Q11. Would the Buy America Preference requirements apply to a monetary amendment to an existing Direct Component grant for an infrastructure project made after May 14, 2022 if the additional funds will be used to cover increased costs due to cost escalation and

inflationary pressures for executed contracts and budgets for purchase of covered materials agreed upon prior to May 14, 2022?	6
Q12. Would the Buy America Preference requirements apply to Direct Component grants for non-infrastructure activities (e.g., architectural design costs and administrative costs)?	6
Q13. Does the Buy America Preference requirements apply to all Direct Component grants for construction or real property improvements?.....	6
Q14. Which types of Direct Component construction projects are not considered infrastructure as defined by the Build America, Buy America Act?	7
Q15. Does the Buy America Preference requirements apply to Direct Component awards for infrastructure projects awarded prior to May 14, 2022?.....	7
Waivers from Buy America Preference Requirements	7
Q16. Are there any general applicability waivers from application of the Buy America Preference requirements in effect for the RESTORE Act, Direct Component awards?.....	7
Q17. What other general applicability waiver(s), if any, will Treasury propose?.....	7
Q18. Will there be opportunities to expedite a waiver request in situations where delay would be injurious to the project?.....	8

BUY AMERICA REQUIREMENTS – GENERAL QUESTIONS

Q1. What is the Build America, Buy America Act?

- A. On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the [Build America, Buy America Act \(the Act\)](#) that strengthens Made in America Laws and will bolster America’s industrial base, protect national security, and support high-paying jobs. Unless a waiver covering the project is in effect, the Act requires that no later than May 14, 2022, Treasury must ensure that grants for infrastructure projects made under the RESTORE Act, Direct Component program comply with the Buy America Preference requirements set forth in section 70914 of the Act by including it in the terms and conditions of each applicable award.

The Act requires the following Buy America Preference requirements:

- (1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) All manufactured products used in the project are produced in the United States. This means the manufactured 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; and
- (3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Q2. What is “infrastructure” under the Build America, Buy America Act?

- A. The term “infrastructure” under the Act means public infrastructure projects including but not limited to 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.

Treasury is working with the OMB Made in America Office (MIAO) to identify, develop, and publish additional definitions to terms that further describe how Buy America Preference requirements apply to the RESTORE Act, Direct Component program. This includes identifying and listing RESTORE Act eligible activities that include construction but that do not qualify as “infrastructure” as defined by the Act. Definitions used in the Buy America Preference award term are available on the Treasury [RESTORE Act - Buy America Preference webpage](#).

- Q3. Does the Buy America Preference requirements set forth in section 70914 of the Build America, Buy America Act apply to Treasury’s RESTORE Act grant programs?**
- A. RESTORE Act, Direct Component grants for infrastructure projects as defined by the Act are required to comply with the Buy America Preference requirements set forth in section 70914 of the Act. The Buy America Preference requirements applies to all new Direct Component grants and monetary amendments to existing Direct Component grant for an infrastructure project made on or after May 14, 2022 unless a waiver covering the project is in effect. The Buy America Preference requirements do not apply to grants under the Centers of Excellence Research Grants Program.
- Q4. Does the Buy America Preference requirements apply to every Direct Component award that includes construction activities?**
- A. No. Prior to making an award, Treasury will determine whether funds from a particular award under the Direct Component program will be used to procure iron, steel, manufactured products, or construction materials for an infrastructure project as defined in section 70912(5) of the Act and OMB Memorandum M-22-11. If Treasury determines that no funds will be used to procure such items for an infrastructure project, then the Buy America Preference requirements will not apply to that award. See FAQs #13 and #14 for more specifics regarding the application of the Act to Direct Component-funded construction projects and the types of Direct Component projects that are not subject to the Buy America Preference requirements.
- Q5. Federal financial assistance that are for “pre and post disaster or emergency response expenditures” are exempt from the application of Buy America Preference requirements outlined in section 70914 of the Build America, Buy America Act. Does the Direct Component grants qualify for this “post disaster” exemption?**
- A. According to the OMB Memorandum M-22-11, “pre and post disaster or emergency response expenditures” exempt from the Buy America Preference requirements “consist of expenditures for financial assistance that are (1) authorized by statutes other than the Stafford Act, 42 U.S.C. §§ 5121 et seq., and (2) made in anticipation of or response to an event or events that qualify as an “emergency” or “major disaster” within the meaning of the Stafford Act, *id.* § 5122(1), (2).” Direct Component grants do not qualify for the “post disaster” exemption because the Deepwater Horizon oil spill was not a “major disaster” or “emergency” as determined by the President as provided in the Stafford Act at 42 USC § 5122(2).
- Q6. Do the Buy America Preference requirements apply to RESTORE Act grants which are made from the Gulf Coast Restoration Trust Fund not appropriated funds?**
- A. Yes. As stated in section II of OMB Memorandum M-22-11, the Buy America Preference requirements set forth in section 70914 applies to all federal financial

assistance as defined in 2 CFR 200.1, “whether or not funded through IIJA-where funds are appropriated or otherwise made available and used for a project for infrastructure.” (see also section 70912(4)(A) of the Act).

Q7. Are there resources for the Direct Component grant recipients and subrecipients to identify available construction materials that comply with Buy America Preference requirements?

- A. Resources are in development. The Act directs OMB to issue guidance that will assist agencies as they apply the new Buy America Preference requirements. OMB must issue standards that define the term “all manufacturing processes” as it relates to construction materials. OMB sought input from the public concerning the Act's requirement that any infrastructure projects funded with Federal financial assistance use only construction materials “produced in the United States.”

OMB has issued a [Request for Information](#) that sought input from the public concerning the Act's requirement that any infrastructure projects funded with Federal financial assistance use only construction materials “produced in the United States.” Treasury will include links on the [RESTORE Act Buy America webpage](#) to any resources that are developed and published as a result of this request.

Q8. Where can I find more information about Buy America Preference requirements?

- A. OMB has established the [Made in America Office](#), which has provided more information about Buy America Preference requirements and waivers. This includes a presentation developed by OMB that guides the reader through the OMB Buy America Preference implementation guidance.

WHAT TRIGGERS BUY AMERICA PREFERENCE REQUIREMENTS

Q9. Would all funds proposed in the budget of a new Direct Component award for an infrastructure project, including third-party funds, be required to comply with the Buy America Preference requirements described in the Act?

- A. Yes. The Buy America Preference requirements apply to all iron, steel, manufactured products, and construction materials purchased for the infrastructure project, even if it is funded by both Federal and non-Federal funds under one or more awards.

Q10. Would the Buy America Preference requirements apply to an existing Direct Component award for infrastructure made before May 14, 2022, if the recipient requires additional third-party funds to cover actual construction costs that are higher than those estimated at the time of award?

- A. No. The Buy America Preference requirements are only applicable if the recipient requests and is approved for a monetary amendment to its existing Direct Component

award for an infrastructure project after May 14, 2022 and there is no waiver in effect for that project, or if the recipient supplements the infrastructure project with funding from another federal financial assistance award that is subject to the Buy America Preference requirements set forth in section 70914 of the Act or other domestic procurement preference requirements.

Q11. Would the Buy America Preference requirements apply to a monetary amendment to an existing Direct Component grant for an infrastructure project made after May 14, 2022 if the additional funds will be used to cover increased costs due to cost escalation and inflationary pressures for executed contracts and budgets for purchase of covered materials agreed upon prior to May 14, 2022?

- A. The Buy America Preference requirements will not apply to a monetary amendment to an existing Direct Component grant for an infrastructure project made after May 14, 2022, if a waiver is in effect at the time that Treasury obligates funds for the monetary amendment, or the additional requested Direct Component funds is not for the procurement of iron, steel, manufactured products, or construction materials for use on the infrastructure project. However, the Buy America Preference requirements will apply to the monetary amendment to an existing Direct Component grant for an infrastructure project if it is made after May 14, 2022 and there is no waiver in effect that covers the project, and the additional funds the recipient seeks are for the procurement of iron, steel, manufactured products, or construction materials for use on the infrastructure project.

Q12. Would the Buy America Preference requirements apply to Direct Component grants for non-infrastructure activities (e.g., architectural design costs and administrative costs)?

- A. No. Buy America Preference requirements does not apply to non-infrastructure spending under an award that also includes an infrastructure project. The Buy America Preference is only applicable if the recipient is requesting Direct Component funds under a new award or an amendment to an existing award to purchase iron, steel, manufactured products, or construction materials for use on an infrastructure project.

Q13. Does the Buy America Preference requirements apply to all Direct Component grants for construction or real property improvements?

- A. No. The Buy America Preference requirements only apply to Direct Component grants for infrastructure projects as defined in section 70912(5) of the Build America, Buy America Act and the Office of Management and Budget (OMB) memorandum, M-22-11 issued on April 18, 2022. Treasury will determine on a case-by-case basis whether the Buy America Preference requirements apply to construction or real property improvement projects that do not squarely fall within the definition of infrastructure as set forth in the Build America, Buy America Act and OMB memo M-22-11.

Q14. Which types of Direct Component construction projects are not considered infrastructure as defined by the Build America, Buy America Act?

Treasury has determined that construction projects whose primary purpose is to protect or restore the environment and/or recover natural ecosystem functions are not infrastructure as defined by the Act. Such projects are not subject to the Buy America Preference requirements outlined in the Act.

Examples of Direct Component restoration construction projects that Treasury would not generally consider to constitute infrastructure would include:

- Marsh restoration and creation;
- Dune restoration;
- Greenway trails;
- Blueway trails;
- Coral reef outplanting and nurseries; and
- Oyster reef restoration

Q15. Does the Buy America Preference requirements apply to Direct Component awards for infrastructure projects awarded prior to May 14, 2022?

- A. No. The Buy America Preference requirements do not apply retroactively to Direct Component awards made prior to May 14, 2022. If in the future the costs of the project increase, requiring a change order to the contract, and a monetary amendment to an existing grant is warranted to purchase iron, steel, manufactured products, or construction materials for use on an infrastructure project, then the Buy America Preference requirements will apply to the award. See response to FAQs #10 and #11 for more detail about when the Buy America Preference applies to amendments to existing Direct Component grants.

WAIVERS FROM BUY AMERICA PREFERENCE REQUIREMENTS

Q16. Are there any general applicability waivers from application of the Buy America Preference requirements in effect for the RESTORE Act, Direct Component awards?

- A. Treasury has a general applicability public interest adjustment period waiver from application of the Buy America Preference requirements in order to provide Treasury and the Direct Component recipients with a six-month adjustment period to develop policies and procedures for implementing the requirements. The waiver was finalized on July 13, 2022 and is effective from July 13, 2022 to January 12, 2023. The waiver is posted on the [RESTORE Act Buy America Preference webpage](#).

Q17. What other general applicability waiver(s), if any, will Treasury propose?

- A. Treasury has identified the need to request from OMB several additional general applicability waivers that Treasury proposes are in the public interest. These include,

but are not limited to, a De Minimis waiver (project purchases below a de minimis threshold such as 5% of project costs up to some maximum); a Small Grants waiver (for projects below the simplified acquisition threshold, or other Agency-defined limit); a Minor Components waiver (for miscellaneous minor components comprising no more than some minimum of the material total cost); and a Pipeline waiver (for projects that are through a design phase and in the implementation pipeline prior to enactment of the Act). Treasury will use the six-month adjustment period to develop and finalize additional waivers, publish them for public comments, and approve them.

Treasury has stood up a Working Group with Direct Component grant recipients that, among other activities, will work to identify, scope, and develop general applicability waivers. If you are interested in joining the Working Group, please contact the OGCR Policy Analyst, Bridget Cotti-Rausch (bridget.cotti-rausch@treasury.gov) for more information.

Q18. Will there be opportunities to expedite a waiver request in situations where delay would be injurious to the project?

- A.** In limited situations where there is an urgent need in an unforeseen and exigent circumstance, Treasury has the authority to waive the application of Buy America preference requirements without submitting the waiver for public comment and to OMB for their review and determination. Treasury will evaluate these requests on a case-by-case basis.

It is the intent of Treasury to implement the Buy America Preference requirements in such a way that increases domestic production but keeps projects moving. Treasury will consider, in a timely manner, a recipient's request for nonavailability waivers should the market research indicate that there is insufficient supply of a necessary material or if the timing of production is insufficient to satisfy the requirements of the project and meet project timelines. Treasury encourages RESTORE Act, Direct Component recipients to coordinate early with their subrecipients and contractors so that there is sufficient time to perform thorough market research to identify potential qualifying alternate items, products, or materials.