



March 13, 2023

Deidre A. Harrison
Deputy Controller, Office of Federal Financial Management
Office of Management and Budget
The White House
Washington, D.C. 20500

Re: Proposed Guidance for Grants and Agreements to Support Successful Implementation of Domestic Preference Procurement Requirements in the Build America, Buy America Act

Dear Deputy Controller Harrison,

Thank you for the opportunity to comment on proposed guidance for grants and agreements to support successful implementation of domestic preference procurement requirements of the Build America, Buy America Act (BABAA). The Council of Infrastructure Financing Authorities (CIFA) is a national organization of the Clean Water and Drinking Water State Revolving Funds (SRFs), which are responsible for ensuring compliance with BABAA for federally funded SRF water infrastructure projects that protect public health and the environment.

CIFA has three primary concerns about the implementation of the proposed guidance.

First, the rule doesn't provide an adequate roadmap for implementation. State public servants, who are responsible for ensuring compliance with the BABAA for federally funded SRF projects, need greater clarity to ensure compliance. To help address these concerns, CIFA provides responses to specific questions posed in the rule in Appendix A and provides those recommendations in tracked edits in Appendix B.

Second, ensuring recipients of federal funding receive equal treatment under the law is paramount to successful, long-term implementation of BABAA. Creating a unified set of rules applied consistently across funding programs across the federal government, especially for waivers, is essential.

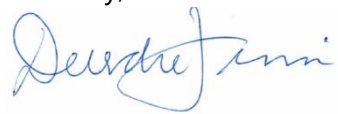
Inconsistency, whether real or perceived, could severely damage the integrity of implementation. For example, the U.S. Environmental Protection Agency (EPA) has adopted different rules, in the form of waivers, for different programs that fund the same types of projects. Under this approach, compliance with BABAA for a drinking water infrastructure project funded by a congressional earmark is different than compliance for the same drinking water infrastructure project funded by the SRFs. If applicants for federal assistance believe they will receive a more favorable interpretation or waiver outcome from a particular program, demand

for federal funding in other programs could decline, stalling the flow of federal funding to critical water infrastructure projects across America.

Third, ensuring a transparent, efficient and cost-effective waiver process for products that aren't available is critical to keeping federal funding flowing to water infrastructure projects, especially in disadvantaged communities and communities with affordability challenges. Processing waiver requests quickly and equitably will reduce the cost of compliance and ensure these vital public health infrastructure projects remain on time and on budget.

Thank you again for the opportunity to comment on this proposed rule. Please contact Deirdre Finn, dfinn@cifanet.org, for more information.

Sincerely,



Deirdre Finn
Executive Director
Council of Infrastructure Financing Authorities

CC: Livia R. Shmavonian, Director, Made in America Office, The White House
Radhika Fox, Assistant Administrator for Water, U.S. Environmental Protection Agency

About CIFA

CIFA is a national not-for-profit organization that represents the Clean Water and Drinking Water State Revolving Funds (SRFs), the nation's premier programs for funding water infrastructure that protects public health and the environment.

Board of Directors, Officers:

- President: Jeff Walker, Texas Water Development Board
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- EPA Region 10: MaryAnna Peavey, Idaho Department of Environmental Quality
- Financial Community: Rob Mellinger, Citigroup

Appendix A

Response to Requests for Specific Comments

(1) Cost of components. In determining the “cost of components” for manufactured products for purposes of this guidance, should OMB adopt a definition based on the definition provided in the FAR at [48 CFR 25.003](#)? OMB intends to adopt the “cost of components” standard from FAR for manufactured products in this guidance for Federal Financial Assistance with minimal modification to ensure that there are consistent and clear market requirements for industry to meet one standard for determining the cost of components of manufactured products. Is there a reason OMB should apply a different standard?

CIFA: OMB should not adopt the definition provided in the FAR at [48 CFR 25.003](#).

Under the Clean Water and Drinking Water SRFs, “manufacturers” are responsible for certifying compliance with requirements to use America iron and steel (AIS) in construction of water infrastructure projects. Based on their experience, the “manufacturer” seems more appropriate than the “contractor” to calculate and certify the cost of components of a manufactured product.

However, OMB should provide more detailed information about how contractors demonstrate compliance with Title 48 Chapter 1 of the Federal Acquisitions Regulations System (FAR). Without a better understanding of the compliance procedures, it is difficult, if not impossible, to determine whether minimal changes are sufficient to establish a rule that can successfully implement the domestic procurement requirements in the Build America, Buy America Act (BABAA).

The BABAA rule is more complex with different statutory requirements than the FAR rule. The BABAA rule needs to define manufactured products, develop a methodology for measuring the cost of components in a manufactured product, and provide guidance for how to comply – none of which is in the current FAR rule. The BABAA rule needs to add guidance about how to determine whether a product is considered “predominantly” iron and steel. The BABAA rule also needs to provide guidance on how to appropriately differentiate products between categories. Providing greater clarity to the roles and responsibilities of manufacturers, states, federal programs and assistance recipients for certifying cost of components and ensuring compliance is also needed.

Given the need for these additions and changes, it seems unlikely that “minimal modification” would ensure “consistent and clear market requirements for industry,” especially for manufacturers who, for the first time, could be responsible for calculating and certifying compliance.

Additional Comments:

- The rule should clearly state that the calculation for “cost of components” only applies to manufactured products, not iron, steel or construction materials.

- “Manufacturer,” not “contractor,” is the more appropriate subject. The manufacturer, not a contractor, has the necessary information, some of which may be proprietary, to make the determination; the contractor may not have access to necessary information.
- The rule should include definitions for “end product” and “component.” However, current definitions in the FAR, below, may not be adequate. Neither definition refers to a manufactured product, which could lead to confusion.
 - In the FAR, an end-product is defined as “those articles, materials, and supplies to be acquired for public use.” Under this definition, the “end-product” could be interpreted as the whole infrastructure project instead of one manufactured project.
 - In the FAR, a component is defined as “an article, material, or supply incorporated directly into an end product or construction material” and applies to supplies and construction materials subject to FAR. The cost of components doesn’t apply to construction material in BABAA.
- The cost of components should include the total cost of the product, including acquisition, manufacturing, overhead, labor, and profit.
- The law doesn’t prohibit profit from being included the calculation. Profit is integral to increasing investment and creating jobs in the United States, which is a stated goal of BABAA. Small businesses must generate a profit margin to remain competitive in the global marketplace and publicly owned companies have a fiduciary responsible to shareholders to generate a profit.
- Using the full cost of the manufactured product will increase transparency, foster participation in federally funded infrastructure programs and reduce non-compliance.

Recommended language:

§ 184.3 Definitions

Manufactured product means an item that consists of multiple components but is not an iron product, steel product or construction material as defined in this chapter.

Component means an item that is part of a steel product, iron product or manufactured as defined in this chapter.

§ 184.5. Determining the cost of components for manufactured products.

Determining the cost of components only applies to manufactured products, not iron, steel or construction materials as defined in this chapter.

The manufacturer of a product is responsible for determining whether the total cost of components produced in the United States is greater than 55% of the total cost of all components used to manufacture the product.

To calculate the percentage, the manufacturer of the product should deduct the costs of (1) and (2) from the cost of the product paid by the recipient of financial assistance:

- (1) Cost to acquire components not produced in the United States, including shipping and applicable duty.
- (2) Cost to manufacture components not produced in the United States, including shipping and applicable duty.

(2) Other construction material standards. What, if any, additional construction materials should be included in the proposed guidance?

CIFA: The list of construction materials doesn't need additional items. Instead, additional details should be added to the existing list to help differentiate when an item should be considered a construction material or a manufactured product. This is especially important for items made with "non-ferrous metals" and "plastic and polymer-based products." These categories of items could include complex products that should more appropriately be considered manufactured products.

Additional Comments:

- Under the current definition, a specialized valve made entirely of non-ferrous material would be defined as a construction material when it may more appropriately be considered a manufactured product.
- Some consider PVC pipe to be a manufactured product, not construction material.
- Because of the potential multiple components, some consider fiber optic cable to be a manufactured product.

(3) Proposed definition of construction materials. Is additional guidance needed on the proposed definition of construction materials?

CIFA: Yes, OMB should revise the definition of construction material and provide additional guidance. The potential "construction materials" in a water infrastructure project are virtually innumerable; it would be impossible and unrealistic to list all of them, especially as new ones continually enter the marketplace. Rather, the rule should define "produced in America," and allow an iterative process by federal agencies for determining whether an item should be classified as a construction material or a manufactured product, especially for water infrastructure projects.

Additional Comments:

- BABAA lists "non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall" along with "steel, iron, manufactured products" as "common construction materials."
- However, BABAA doesn't specifically define construction materials; BABAA defines standards for "produced in the United States" for construction materials.
- The proposed definition of construction materials may capture items that are better defined as manufactured products.

- Some of the listed construction materials are too general and will include more products than intended.
- Construction materials should be limited to more simple products and raw materials that do not include complex manufacturing processes, mechanical products, equipment, and systems that are more associated with manufactured goods.
- Federal agencies may be better equipped to differentiate manufactured products from more generic construction materials for specific projects, especially for water infrastructure projects which have specialized technical equipment.
- OMB should provide an exhaustive list of examples of potential construction material.

Recommended language:

§ 184.3 Definitions

Construction material means an item that only consists of one or more of the following materials but are not mechanical or part of a complex equipment system:

- (i)) Non-ferrous metals;
- (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- (iii) Glass (including optic glass);
- (iv)) Fiber optic cable;
- (v) Optical fiber;
- (vi) Lumber; or
- (vii) Drywall.

(4) Definition for “predominantly” iron or steel items. To be consistent with certain existing Buy America and Buy American laws and policies, or for other reasons, should OMB adopt a definition of “predominantly” iron or steel items?

CIFA: Yes, OMB should adopt a definition of “predominantly” iron and steel items consistent with the definition in FAR.

Additional Comments:

- OMB should consider adding a calculation to determine “predominantly” using a similar formula to determine the cost of components for manufactured products.
- EPA uses the term “primarily” in determining compliance with American iron and steel (AIS).
- Compliance with AIS requires the cost of components of the product to exceed 50%.
- The guidance should also indicate whether the components not made of iron or steel have to be produced in the United States.

Recommended language:

§ 184.3 Definitions

Iron or steel products means items that consist wholly or predominantly of iron, steel, or both. Predominantly or primarily iron and steel means that the cost of iron and steel exceeds 50 percent of the total cost of all its components.

(5) How to distinguish between categories of products. Is further guidance needed on how to distinguish between steel or iron products, manufactured products, and construction materials?

CIFA: Yes, OMB needs to refine the definitions to more clearly differentiate between categories and provide specific examples to help differentiate between iron and steel products, construction materials and manufactured products. During the initial implementation, reducing the list of items under construction materials may allow federal agencies and manufacturers to sort through the specific items to determine a comprehensive list of manufactured products.

Additional Comments:

- OMB should provide an exhaustive list of examples of potential construction material.
- Examples should be presented in guidance, not in the proposed regulation.

(6) Meaning of composite building materials.

CIFA: If OMB maintains the current list construction materials, composite building materials should be a subcategory of plastic and polymer-based products. If OMB creates a separate category, it should provide more information that indicates composite building materials are only those building materials made of plastic and polymer-based products combined with other building materials on the list of construction materials. Otherwise “composite” could refer to any other type of material, not just plastic or polymer-based materials.

(9) Aggregates.

CIFA: Since the law explicitly exempted these materials, OMB should exclude them from BABAA entirely, not classify them as a different covered material category.

(10) Specific sections of proposed guidance.

CIFA recommendations for § 184.3 Definitions: CIFA recommends revising definitions to remove ambiguity and provide greater clarity to federal, state and local public servants who will be responsible for ensuring compliance with the law.

Definition of infrastructure project:

- Remove “any activity related to” which is unnecessary and may be confusing for the purposes of this rule.
- Use “physical structures or facilities” to define infrastructure.
- Remove “in United States” as BABAA applies to federally funded infrastructure without any limitations on where the infrastructure is built.
- Add “using federal funds” to further clarify the rules apply to federally funded infrastructure projects.

Recommended language:

Infrastructure project means the construction, alteration, maintenance, or repair of physical structures or facilities using federal funds regardless of whether infrastructure is the primary purpose of the project.

Definition of iron, steel, construction materials and manufactured products:

- Create parallel construction by use the word “item” across the definitions, which will also help differentiate between product categories.
- Remove “incorporated into an infrastructure project that” from the definitions as it is unnecessary for the purposes of this rule.
- Move (2) in the definition of construction materials related to “binding agents” to the definition of “Produced in the United States” for construction materials.
- Add a definition for “component.”

Proposed definitions:

Construction material means an item that only consists of one or more of the following materials but are not mechanical or part of a complex equipment system:

- (i) Non-ferrous metals;
- (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- (iii) Glass (including optic glass);
- (iv) Fiber optic cable;
- (v) Optical fiber;
- (vi) Lumber; or
- (vii) Drywall.

Iron or steel product means items that consist wholly or predominantly of iron, steel, or both. Predominantly or primarily iron and steel means that the cost of iron and steel exceeds 50 percent of the total cost of all its components.

Manufactured product means an item that consists of multiple components but is not an iron product, steel product or construction material as defined in this chapter.

Component means an item that is part of an iron product, steel product or manufactured product as defined in this chapter.

Definition of “Produced in the United States.”

- Add language to the standard for iron and steel products that other components do not have to be produced in the United States.
- Move Section “§ 184.6 Construction material standards” to the definition of “Produced in the United States” to provide consistency.
- Move the language about “binding agents” from the definition of construction materials to the definition of “Produced in the United States” for construction materials since it is more relevant to qualifying an item.
- Revise the definition of “produced in the United States” for “manufactured products” to clearly differentiate between products that have all components manufactured in the United States and those with components manufactured from other countries.

Proposed definitions:

- (1) *Iron and steel products.* All manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Components not made of iron and steel shall be disregarded.
- (2) *Manufactured products.*
 - (i) All components of the item are made, mined, produced or manufactured in the United States; and
 - (ii) an item that doesn’t qualify under (i), the cost of the components that are made, mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the item, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. The costs of components of a manufactured product are determined according to § 184.5.
- (3) *Construction materials.* All manufacturing processes for construction material occurred in the United States based on the following standards. For items consisting of more than one construction material, each item must meet the standard, but any binding agent shall be disregarded.
 - (i) *Non-ferrous metals.* All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
 - (ii) *Plastic and polymer-based products.* All manufacturing processes, from initial combination of constituent, plastic or polymer-based inputs until the item is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.
 - (iii) *Composite building materials.* All manufacturing processes, from initial combination of constituent materials until the composite material is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.

(iv) *Glass*. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

(v) *Fiber optic cable*. All manufacturing processes, from the initial preform fabrication stage through fiber stranding and jacketing, occurred in the United States.

(vi) *Optical fiber*. All manufacturing processes, from the initial preform fabrication stage through fiber stranding, occurred in the United States.

(vii) *Lumber*. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

(viii) *Drywall*. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

(11) Reducing burden on recipients.

CIFA recommendations for § 184.7: CIFA recommends revisions to the waiver process to ensure water infrastructure projects remain on time and on budget.

- In (4), replace “before finalizing the waiver” with “at the conclusion of the public comment period.
- Add (5) which requires final decisions on waivers within 15 days from the end of the comment period.

Proposed language:

(4) At the conclusion of the public comment period, submit the waiver determination to the Office of Management and Budget Made in America Office for final review pursuant to Executive Order 14005 and sections 70923(b)(2) and 70937 of the Infrastructure Investment.

(5) The Office of Management and Budget Made in America Office will provide final review of the waiver determination no later than 15 days from conclusion of public comment period. After 15 days has passed, the waiver determination will become effective, and the Federal awarding agency shall issue the waiver within 15 days.

Appendix B

Below are recommendations in tracked edits. These edits are not a final or exhaustive of changes that are needed to the proposed rule.

Part 184 Buy America Preferences for Infrastructure Projects

Sec.

184.1 Purpose of this part.

184.2 Applicability.

184.3 Definitions.

184.4 Applying the Buy America Preference to a Federal award.

184.5 Determining the cost of components for manufactured products.

184.6 Construction material standards.

184.7 Federal awarding agency's issuance of a Buy America Preference waiver.

184.8 Exemptions to the Buy America Preference.

Authority

Pub. L. 117-58, 135 Stat. 429.

§ 184.1 Purpose of this part.

This part provides guidance to Federal awarding agencies on the implementation of the Buy America Preference applicable to Federal financial assistance set forth in part I of subtitle A, Buy America Sourcing Preferences, of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act (Pub. L. 117-58) at division G, title IX, subtitle A, part I, sections 70912 through 70917. Section 70914 of the Build America, Buy America Act requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

§ 184.2 Applicability.

This part applies to a Federal award for an infrastructure project only to the extent that a Buy America Preference meeting or exceeding the requirements of section 70914 of the Build America, Buy America Act did not apply to iron, steel, manufactured products, and construction materials in the Federal financial assistance program under which the Federal award is provided before November 15, 2021.

§ 184.3 Definitions.

Terms not defined in this part shall have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

Build America, Buy America Act means division G, title IX, subtitle A, part I, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58).

Buy America Preference means the "domestic content procurement preference" set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal

agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

Component means an item that is part of a manufactured product, steel product or iron product as defined in this chapter.

Construction materials means ~~an item~~ articles, materials, or supplies incorporated into an infrastructure project that only consists of only one or more of the following materials, ~~except as provided in paragraph (2) of this definition:~~

- (i) Non-ferrous metals;
- (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- (iii) Glass (including optic glass);
- (iv) Fiber optic cable;
- (v) Optical fiber;
- (vi) Lumber; or
- (vii) Drywall.

~~(2) For an item that consists only of a combination of one or more of the construction materials listed in paragraph (1) of this definition and binding agents, any binding agents shall be disregarded, and each construction material must meet the Buy America Preference standard defined in § 184.6.~~

Infrastructure project ~~means is any activity related to~~ the construction, alteration, maintenance, or repair of ~~infrastructure in the United States~~ structures or facilities regardless of whether infrastructure is the primary purpose of the project.

Iron or steel products means ~~articles, materials, or supplies incorporated into an infrastructure project~~ an item that consists wholly or predominantly of iron, steel, or both. Predominantly or primarily iron and steel means that the cost of iron and steel exceeds 50 percent of the total cost of all its components.

Manufactured products means an item that consists of multiple components but is not an iron product, steel product or ~~articles, materials, or supplies incorporated into an infrastructure project~~ that:

- (1) ~~Do not consist wholly or predominantly of iron or steel or both; and~~
- (2) ~~Are not categorized as a~~ construction material (as defined in this chapter ~~section~~).

Produced in the United States means the following, for:

(1) Iron and steel products. All manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Components not made of iron and steel shall be disregarded.

(2) Manufactured products.

(i) ~~The product was~~ All components of the item are made, mined, produced or manufactured in the United States; and

(ii) For an items that doesn't qualify under (i), ~~the~~ 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. The costs of components of a manufactured product are determined according to § 184.5.

(3) Construction materials. All manufacturing processes for ~~the~~ construction material occurred in the United States based on the following standards. For items consisting of more than one construction material, each item must meet the standard, but any binding agent shall be disregarded. See § 184.6 for more information on the meaning of "all manufacturing processes" for specific construction materials.

(a) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

(b) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent, plastic or polymer-based inputs until the item is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.

(c) Composite building materials. All manufacturing processes, from initial combination of constituent materials until the composite material is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.

(d) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

(e) Fiber optic cable. All manufacturing processes, from the initial preform fabrication stage through fiber stranding and jacketing, occurred in the United States.

(f) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through fiber stranding, occurred in the United States.

(g) Lumber. All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.

(h) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

§ 184.4

Applying the Buy America Preference to a Federal award.

(a) The Buy America Preference applies to awards where funds are appropriated or otherwise made available for infrastructure projects in the United States, regardless of whether infrastructure is the primary purpose of the award.

(b) All Federal awards with infrastructure projects must include the Buy America Preference in the terms and conditions. The Buy America Preference must be included in all subawards, contracts and purchase orders for the work performed, or products supplied under the award. The terms and conditions of a Federal award flow down to subawards to subrecipients unless a particular section of the terms and conditions of the Federal award specifically indicate otherwise.

(c) Infrastructure encompasses public infrastructure projects which includes at a minimum, 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; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

(d) The Federal awarding agency should interpret the term "infrastructure" broadly and consider the description provided in paragraph (c) of this section as illustrative and not exhaustive. When determining if a particular project of a type not listed in the description in paragraph (c) constitutes "infrastructure," the Federal awarding agency should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public.

§ 184.5

Determining the cost of components for manufactured products.

[Determining the cost of components only applies to manufactured products, not iron, steel or construction materials as defined in this chapter.](#)

The manufacturer of a product is responsible for determining whether the total cost of components produced in the United States is greater than 55% of the total cost of all components used to manufacture the product.

To calculate the percentage, the manufacturer of the product should deduct the costs of (1) and (2) from the cost of the product paid by the recipient of financial assistance:

(1) Cost to acquire components not produced in the United States, including shipping and applicable duty.

(1)(2) Cost to manufacture components not produced in the United States, including shipping and applicable duty.

In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following definitions:

(a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

§184.6

Construction material standards.

The Buy America Preference applies to the following construction materials used in infrastructure projects. Each construction material is followed by a standard for the material to be considered "produced in the United States."

(a) ~~Non-ferrous metals.~~ All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

(b) ~~Plastic and polymer-based products.~~ All manufacturing processes, from initial combination of constituent, plastic or polymer-based inputs until the item is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.

~~(c) Composite building materials. All manufacturing processes, from initial combination of constituent materials until the composite material is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.~~

~~(d) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.~~

~~(e) Fiber optic cable. All manufacturing processes, from the initial preform fabrication stage through fiber stranding and jacketing, occurred in the United States.~~

~~(f) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through fiber stranding, occurred in the United States.~~

~~(g) Lumber. All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.~~

~~(h) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.~~

§ 184.7

Federal awarding agency's issuance of a Buy America Preference waiver.

(a) A Federal awarding agency may waive the application of the Buy America Preference in any case in which it finds that:

(1) Applying the Buy America Preference would be inconsistent with the public interest (a "public interest waiver");

(2) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a "nonavailability waiver"); or

(3) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an "unreasonable cost waiver").

(b) A request from a non-Federal entity to waive the application of the Buy America Preference must be provided to the Federal awarding agency in writing. Federal awarding agencies shall provide waiver request submission instructions and guidance on the format, contents, and supporting materials required for waiver requests from non-Federal entities.

(c) Before issuing a waiver, the Federal awarding agency must:

(1) Prepare a detailed written explanation for the proposed determination to issue the waiver, including for those proposed waivers based on a request from a non-Federal entity;

(2) Make the proposed waiver and the detailed written explanation publicly available in an easily accessible location on a website designated by the Federal awarding agency and the Office of Management and Budget;

(3) Provide a period of not less than 15 calendar days for public comment on the proposed waiver; and

(4) ~~Before finalizing a waiver~~ At the conclusion of the public comment period, submit the waiver determination to the Office of Management and Budget Made in America Office for final review pursuant to Executive Order 14005 and sections 70923(b)(2) and 70937 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58).

(5) The Office of Management and Budget Made in America Office will provide final review of the waiver determination no later than 15 days from conclusion of public comment period. After 15 days has passed, the waiver determination will become effective, and the Federal awarding agency shall issue the waiver within 15 days.

(d) The review of existing waivers of general applicability are subject to a minimum 30-day public comment period.

§ 184.8

Exemptions to the Buy America Preference.

(a) The Buy America Preference does not apply to expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.

(b) "Pre and post disaster or emergency response expenditures" 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, 42 U.S.C. 5122(1), (2).