



Transportation Trades Department, AFL-CIO

TTD Calls for Strong Implementation & Enforcement of Build America, Buy America Provisions

When the Infrastructure Investment and Jobs Act (IIJA) became law in 2021, it codified a number of transportation labor's key priorities, including strengthened worker protections that support high wages and safe jobs, and powerful domestic content requirements, in addition to its historic investments in transportation infrastructure. Now, three years later, we must reflect on the degree to which these provisions have been meaningfully implemented.

Transportation Labor [previously called for](#) the full implementation and vigorous enforcement the Build America, Buy America (BABA) provisions in the IIJA, which was enacted to enhance existing Buy America laws and close loopholes. After a series of initial implementation delays across departments, the Office of Management and Budget (OMB) issued guidance for complying with the BABA law which requires that iron and steel, construction materials, and manufactured products used in all federally assisted infrastructure projects be produced domestically. If implemented as intended by Congress, the BABA law stands to leverage federal infrastructure spending into stronger U.S. supply chains and jobs for America's workers. Full implementation and vigorous enforcement also ensures that the inputs used in our taxpayer funded infrastructure projects are produced in accordance with U.S. worker safety and environmental protection laws. In the absence of Buy America, these public policy goals are detached from our infrastructure spending as tax dollars serve to incentivize production outside the United States where companies are free to exploit workers and adhere to lesser environmental protections.

While significant progress toward BABA implementation was made under the Biden-Harris administration, there are opportunities to improve the implementing policies to ensure that all stakeholders share in the benefits of federal infrastructure spending – including America's workers. One of the key implementation concerns is that agencies continue to rely on broad and open-ended waivers of general applicability rather than *ad hoc* project-specific waivers authorized in the BABA law to overcome short-term market limitations, such as excessive cost or nonavailability. TTD has filed several public comments responding to proposed general waivers of Buy America requirements that have been overly broad, arguing that such an approach bypasses U.S. companies and their workers ready to supply needed construction inputs. Moreover, TTD has argued that broad waivers fail to identify gaps in our supply chains that would otherwise be discovered through narrower, project-specific waivers. As a result, broad waivers provide little transparency into the health of our supply chains and, consequently, undermine any market signals that induce companies to make U.S. capital investments in new factory production. To the extent a general waiver is necessary where an *ad hoc* project-specific approach is inefficient or redundant, it must be narrowly construed and paired with reasonable time limitations so that they can be periodically reviewed to assure its continued necessity as the U.S. supply chain adjusts.

The purpose of Buy America policies is to create *preferences* for U.S. produced products and materials in taxpayer financed government procurements, not to impose unworkable requirements. This is precisely why Congress authorized waivers as an important Buy America tool to: a) ensure that projects can proceed without unnecessary delay; b) identify gaps in our supply chain for the benefit of policymakers and the public; and c) leverage the identification of those gaps into powerful market signals that induce capital investments. Thus, it is vital that we view the issuance of *ad hoc* project-specific waivers, or even limited use of general waivers that are narrow and targeted rather than broadly applied, as an indication that Buy America is being appropriately administered. There should be no room for politicizing the waiver process, even if it results in many waivers that offer valuable insights into U.S. industrial capabilities. Waivers must be interpreted not as political weaknesses but rather an indication of the current health of our industrial base. It should be no surprise that after decades of deindustrialization Buy America waivers are necessary. An efficient waiver process that avoids project delays while also achieving maximum transparency of specific supply chain gaps is the optimal outcome as policymakers build upon the BABA law. Where there is a documented need, agencies must make every effort to expedite waivers on a project-specific basis and do so in a transparent manner by allowing an opportunity for a 15-day public comment period. It is unacceptable for legitimate request for waivers to not receive timely determinations by agencies.

The issuance of broadly constructed waivers can have the effect of signaling to stakeholders that products, and even entire categories of products, are not made here and never will be. TTD applauded FHWA for initiating a rulemaking process to discontinue the longstanding general waiver of manufactured products – issued in 1983 under the Reagan administration and maintained by each administration that followed. It is critical to finalize rulemaking so that all stakeholders have certainty as to how FHWA will apply the law to this category of manufactured products. To its credit, FHWA proactively crafted a strategy to phase-in Buy America coverage for electric vehicle (EV) chargers – a step that has spurred massive investments across the country to produce chargers in the United States rather than relying on foreign adversaries. The Biden-Harris administration is to be applauded for its work to send the clear message to manufacturers that while a U.S.-produced item may not be available at this very moment, there is an expectation and reward for those who make investments to re-shore these pieces of our manufacturing supply chain. Waivers may be necessary today, but with the right approach further waivers will not be necessary in the future. The next administration must continue this progress by relying on *ad hoc* project-specific waivers and, if necessary, general waivers that are narrow, time-limited, and transparent. Reviewing waivers and evaluating the merits of extending, discontinuing, or modifying such waivers as their expiration date nears is critical for all stakeholders.

Finally, Congress has a crucial role to play in further improving Buy America policy when it reauthorizes our surface transportation programs in late 2026. To ensure that agencies are equipped to administer Buy America and to efficiently and expeditiously make waiver determinations, Congress must ensure that DOT has appropriate resources for staffing, to conduct outreach and education, and to carry out its BABA directive to collaborate with the MEP Supplier Scouting program to identify existing suppliers or those who can retool to fill gaps where waivers have been sought or approved. The surface reauthorization also presents opportunities to strengthen Buy America coverage for upstream content, such as batteries and other components used in electric buses and other forms of zero-emission rolling stock vehicles. Application of Buy America

policies with a focus on upstream content makes our nation stronger and more prepared to respond to crisis. Most importantly, Congress must reject any shortsighted attempts to undermine existing laws, including by those making half-hearted complaints that Buy America is too complicated or confusing. Nevertheless, DOT and other departments have a responsibility to work with all transportation stakeholders to create clear expectations for the construction sector and deliver powerful market signals necessary for manufacturing investments to occur.

The TTD Executive Committee calls upon the next administration to intensify efforts to fully implement and vigorously enforce Build America, Buy America (BABA) requirements enacted as part of the IIJA, ensuring that taxpayer-funded infrastructure projects utilize iron and steel, construction materials, and manufactured products produced in the United States by America's workers. TTD calls on the next administration to continue shifting away from broad, general waivers to *ad hoc* project-specific waivers and, if necessary, general waivers that are narrow, time-limited, and transparent. Congress should closely monitor for existing loopholes and avoiding creating new ones. Furthermore, Transportation Labor urges federal agencies to enhance transparency and consistency in their guidance to support compliance for all stakeholders while adhering to the intent of Congress and the expectations of U.S. taxpayers. TTD stands ready to work with the next Administration and Congress to build on the substantial progress of BABA implementation under the Biden-Harris administration.

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