



The U.S. Department of Transportation (USDOT) recently released several critical updates on the implementation of the Build America, Buy America (BABAA) Act for federally assisted transportation projects.

- **UPDATE #1:** USDOT proposes to NOT renew beyond November 9, 2022, its general waiver of the new Buy America preference for construction materials included under BABAA.
 - This means, with one general exception, all federally assisted transportation contract awards issued on or after November 10, 2022, must include BABAA compliant construction materials—in addition to steel, iron and manufactured products under existing Buy America requirements. That is because the [previous waiver](#) expires on November 9, 2022.
 - The only exception is for any contract entered into before March 10, 2023, if the contract results from a solicitation published prior to May 14, 2022. USDOT found that solicitations issued before May 14, 2022—the original effective date for including BABAA requirements in contract awards—were reasonably based on design and engineering considerations under the old Buy America requirements and not new BABAA requirements. As such, awards for those project solicitations must occur on or before March 9, 2023.
- **UPDATE #2:** USDOT proposes to maintain the waiver of the new Buy America preference for construction materials included under BABAA to contracts awarded on or before November 9, 2022.
 - This means that federally assisted transportation contracts awarded on or before November 9, 2022, will continue to operate under the old Buy America requirements and need not add the new Buy America preference for construction materials under BABAA for the duration of the contract.
 - Such a grandfathering of this waiver of the requirement was legally necessary because USDOT allowed the previous waiver of BABAA requirements to expire. As a result, USDOT had to include this previous waiver in its new, extremely limited waiver (described above) to maintain that policy.
- **UPDATE #3:** USDOT proposes to waive BABAA in full according to new thresholds for a de minimis costs, small grants, and minor components.
 - DOT is proposing to waive BABAA's Buy America preferences for iron and steel, manufactured products, and construction materials used in infrastructure projects funded by USDOT programs under a single financial assistance award for which:
 - The total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total allowable costs under the federal financial assistance award;
 - The size of the federal financial assistance award is below \$500,000; or
 - The non-domestically produced miscellaneous minor components comprise no more than 5 percent of the total material cost of an otherwise domestically produced iron or steel products