

DEPARTMENT OF DEFENSE REPORT

The Department's Bi-Annual Report on Made in America Laws



**Office of the Under Secretary of Defense for
Acquisition and Sustainment**

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1. Background

The Department is committed to maximizing the use of goods, products, and materials produced in, and services offered in, the United States – Made in America. The Department continuously strives to increase our procurement of goods, products, materials, and services from sources that will help American businesses compete and ensure America's workers thrive.

Increasing our domestic capabilities has been a longstanding initiative of the federal government, starting with the Buy American Act of 1933 (BAA) (41 USC Ch. 83: Buy American). In support of the Buy American Act, the Department collects information regarding contracts where we were not able to buy from U.S. sources. The Department is also providing transparency on the use of exceptions to Buy American where we have had to turn to foreign suppliers. This visibility for nonavailability waivers enables domestic firms to see these opportunities to encourage vendors to grow domestic capability and capacity to meet these mission needs.

In addition, we are increasing visibility into DoD's longstanding efforts to promote a healthy defense industrial base built on resilient, diverse, and secure supply chains. These efforts mutually support the overall goal of a more resilient, competitive, and diverse defense industrial base to support our current and emergent mission needs in support of our national security.

1.1 About Buy American Exceptions and Waivers

BAA (Buy American Statute) requires federal agencies to apply a price preference for domestic end products for contracts performed in the United States. Exceptions that DoD uses are as follows:

- Nonavailability: The BAA does not apply when end products or components to be acquired are not mined or produced in the U.S. in sufficient and reasonably available commercial quantities, and of a satisfactory quality;
- When the contracting officer determines the cost of a domestic end product would be unreasonable;
- When an agency head determines applying a domestic preference would be inconsistent with the public interest (e.g., invoking a Reciprocal Defense Procurement agreement with a foreign government that provides an exception to the BAA);
- The acquisition of information technology that is a commercial item; and
- Foreign end products purchased specifically for commissary resale.

BAA does not apply to procurements below the micro-purchase threshold, or if the product will be used outside of the United States.

In addition, some of the restrictions may be waived pursuant to the Trade Agreements Act of 1979. Subject to the thresholds at Federal Acquisition Regulation (FAR) 25.402

and applicability at Defense FAR Supplement (DFARS) 225.401-70, end products imported from a country that has a trade agreement with the United States are treated as domestic products. This includes countries that have signed the World Trade Organization (WTO) Agreement on Government Procurement (GPA), are signatories to the United States-Mexico-Canada Agreement or Free Trade Agreement, or have otherwise been designated by the President.

Further, for DoD, the BAA is waived in cases where DoD has a bilateral Reciprocal Defense Procurement (RDP) agreement with a qualifying country. In these cases, the Secretary of Defense has signed a blanket public interest waiver applicable to 28 countries (DFARS 225.003, Definitions).

Table 1. Summary of Buy American Act Exceptions and Waivers

Exceptions	Does not apply	Waivers
<ul style="list-style-type: none"> • Nonavailability • Domestic price/cost is unreasonable • Inconsistent with public interest • Information technology that is a commercial item • Commissary resale 	<ul style="list-style-type: none"> • Below the micro-purchase threshold • Will be used outside of the United States and certain territories 	<ul style="list-style-type: none"> • World Trade Organization—Government Procurement Agreement (WTO GPA) • Free Trade Agreements • Reciprocal Defense Procurement agreement

This report discusses DoD's efforts to reduce our use of exceptions and waivers and thereby increase domestic production. To make the report easier to read, we use the term "waivers" to mean either exception or waiver.

1.2 Reporting Requirement

This bi-annual report is required by Executive Order (EO) 14005, *Ensuring the Future is Made in All of America by All of America's Workers*, Section 12, with additional guidance provided in the Office of Management and Budget (OMB) Memorandum M-21-26, *Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws*, dated June 11, 2021. OMB provided additional report guidance on June 24, 2022, which included direction that a separate section in the report provide a Build America, Buy America (BABA) Act Implementation Plan and set the report due date to August 5, 2022.

The first report submitted July 24, 2021, described DoD's implementation of, and compliance with, Made in America laws and our use of waivers or exceptions. The second report describes progress the Department made in the intervening months toward implementing the policies of EO 14005. OMB placed a high priority on identifying instances where products were not available from domestic sources and making them highly visible, so the report emphasized DoD's nonavailability waivers.

As requested by OMB in the June 24 guidance, this report focuses on ongoing and planned efforts the Department has made in the past six months to increase the use of Made in America products and services, support domestic manufacturing, and address feedback provided by the Made in America Office (MIAO). It updates and expands upon previously provided information.

Some information requested by MIAO was not available for inclusion in the July 2022 report. Our plan is to submit this information at the next bi-annual reporting cycle.

2. Report Element 1 – The Department's Progress Reducing the Use of Waivers

EO Section 12(a). Address the agency's ongoing implementation of, and compliance with, Made in America Laws.¹

This part of the report highlights significant changes or actions taken since the previous 180-day report. For example, agencies should include new policies, trainings, or processes instituted; progress made to reduce use of waivers; and/or the analysis and explanation of items for which waivers are needed or there is a barrier to produce domestically.

2.1 Actions Taken and Updates Made

Actions taken and/or updates made since the prior report.

2.1.1 New Policies, Processes and Training

Include new policies, trainings, or processes instituted.

The Department established the DoD Senior Accountable Official (SAO) Network with SAOs in the Defense Logistics Agency (DLA), the Army, Air Force, and Navy to rapidly disseminate information and program updates to the components' acquisition workforce. The SAO network has been actively participating in MIAO's Made in America Council meetings and coordinating each component's efforts to increase the use of domestic products.

2.1.1.1 DoD web site update

DoD updated the Defense Pricing and Contracting (DPC) website with the following information to support Made in America initiatives further implementing The President's EO 14005 - Ensuring the Future is Made in All of America by All of America's Workers:

- OMB-provided guidance and information implementing EO 14005, including links to OMB's Made in America website and view of posted waivers;

¹ "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to Federal financial assistance awards or Federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods offered in the United States. Made in America Laws include laws requiring domestic preference for maritime transport, including the Merchant Marine Act of 1920 (Public Law 66-261), also known as the Jones Act.

- Information about contracting policies and regulations related to domestic and foreign purchasing;
- DoD reporting demonstrating efforts made to increase the Department's Made in America purchasing, to include links to annual reports on purchases from foreign entities;
- Links and information on DoD's efforts to build domestic manufacturing resilience and ally sources to help reduce the need for Buy American Statute waivers and exceptions;
- Information on laws and regulations that promote purchasing from domestic US sources and allowable exceptions and waivers, including binding commitments under international agreements with partner countries; and
- DoD Senior Accountable Officials network to help promote communications on domestic sourcing.

The web site URL is <https://www.acq.osd.mil/asda/dpc/cp/ic/index.html>.

2.1.1.2 Training Updates

Defense Acquisition University (DAU) is working with the Federal Acquisition Institute (FAI) to update training related to the Buy American statute. The new integrated training which incorporates the recent updates resulting from the final FAR rule is expected to be complete by the end of September 2022. DAU is creating a new tool to assist with understanding how to apply the applicable DFARS provision and clause. The tool is currently going through peer review within DAU, including the prior Learning Asset manager of the online Buy America course. DAU will host at least two live events to go over the tool and recent updates, probably in October 2022. FAI is developing a similar tool for federal civilian agencies.

The Department of the Air Force (DAF) has taken the approach to not only train and coach our contracting community, but our mission partners on the importance of procuring products that are only Made in America. DAF has implemented several new training forums in the past six months on a local level to include training to our contingency contracting officers (CCO) and DAF outside the continental U.S. (OCONUS) areas to ensure the necessity and importance of the Buy American statute implementations. DAF has also developed specific training in the construction area of expertise making sure the DAF construction teams seek out firms that are required to source products Made in America. As part of the oversight and acceptance process, the Civil Engineers also ensure the materials used are in compliance.

2.1.2 Progress Made to Reduce the Need for Waivers

Progress made to reduce use of waivers.

The Navy has enhanced data analysis of domestic non-availability waivers. It has discovered that contracting officers have erroneously reported domestic non-availability waivers in the Federal Procurement Data System (FPDS). This discovery was enabled by

the checks and balances offered by the MiA Portal, which is crosschecked with every award. Through June 2022, the Navy has only two reported domestic non-availability procurements, and has found several examples of incorrect data entry in element 9H of the contract action report (CAR). Each domestic non-availability procurement is assessed by the SAO, through the contracting office, to ensure accurate reporting and to remedy inaccurate CAR data.

As the barrier continues to focus on industry awareness of needs and often disjointed buys across the DoD, DAF continues to do an excellent job of not executing a waiver in the past six months. Market research continually evolves to find Made in America products. For construction, DAF actively seeks out firms that are required to source products that are only Made in America. In addition, as part of the oversight and acceptance process, the Civil Engineers also ensure the materials used are in compliance. DAF continues to consolidate and update tools on the Air Force Contracting Central web site and the Air Force Installation Command sponsors a business intelligence page. DAF uses tools like Supply Chain Business Intelligence (SCBI), Air Force Business Intelligence Tool (AFBIT Lite) and Produce Service Code (PSC) tools help teams search DAF-wide and include knowledge of supplier base by North American Industry Classification System (NAICS)/PSC/etc. Making U.S. supply chains more resilient and applying new Tactics, Techniques and Procedures (TTPs) allow contracting officers and mission owners to avoid waivers.

2.1.3 Barriers to Eliminating Existing Waivers

The analysis and explanation of items for which waivers are needed or there is a barrier to produce domestically.

Typically, waivers and exceptions to the Buy American Statute are only used on a limited basis when market research, data, analysis, and management oversight and approval point to a foreign source or country of origin other than the United States. For example, only 0.1% of total FY21 actions for DoD utilize waivers or exceptions to the Buy American Act, representing only 1.0% of total FY21 obligations. These are approximately the same percentages as in FY20. These outcomes demonstrate the Department's overall efforts and commitment to supporting domestic sourcing requirements and U.S. industry, but opportunities remain. Table 2 below provides the most recent information on actions where the restrictions of BAA were not applied.

Table 2. Number of purchases and dollar value of manufactured articles for which the restrictions of the BAA were not applied in FY 2021 (Source: FPDS-NG)

Authority	Actions	Dollars	% of Total
The Buy American Act does not apply			
Use outside the U.S.	14,711	\$2,024,993,533	34.85%
Waivers of the Buy American Act			
Qualifying Countries	36,919	\$3,207,536,700	55.20%
WTO GPA and Free Trade Agreements ²	2,288	\$265,889,354	4.58%
	39,207	\$3,473,426,054	59.77%
Authorized Exceptions to the Buy American Act			
Domestic Nonavailability Determinations	2,244	\$225,719,400	3.88%
Commercial IT	341	\$55,736,196	0.96%
Resale	73	\$5,528,167	0.10%
Unreasonable Cost	6,757	\$25,021,494	0.43%
Public Interest Exception	6	\$478,752	0.01%
	9,421	\$312,484,009	5.38%
Total:	63,339	\$5,810,903,596	100.00%

Within the 48,628 total waivers and exceptions to Buy American requirements, nearly 81% were waivers under existing binding international agreements. These purchases were made under the Trade Agreements Act and RDP Agreements with qualifying foreign countries. Under these agreements, the restrictions of the Buy American Statute are already waived and end products and/or components are considered domestic for the purposes of meeting the domestic content threshold. This same benefit is afforded to U.S. industry end items in that RDP country. In addition, RDP Agreements provide for enhanced interoperability, support of a common defense, and improve defense cooperation.

As in FY20, the two largest remaining waiver categories are those for domestic nonavailability and unreasonable cost. These speak directly to insufficient domestic capacity and capability to award to a U.S. vendor. In the case of unreasonable price, the domestic suppliers, even with a present evaluation credit of 50%, are still not competitive for award, often due to unbalanced competition through low wage rates, foreign incentives or lax enforcement of environmental standards. This is precisely why our collective efforts have been focused initially on domestic nonavailability.

As a result, the Department believes continued concentration of this class of waivers, coupled with the efforts to identify critical items and materials to receive super preference discussed earlier, are the clearest path to reducing waivers. Waiver

² See dollar thresholds at FAR 25.402, Table 1 to Paragraph (b) and applicability for DoD at DFARS 225.401-70 End products subject to trade agreements.

reductions, driven by real and measurable increase in domestic capacity and capability for those targeted waivers and within those critical end items and materials.

2.2 Initial Progress toward Maximizing Domestic Products

To demonstrate initial progress toward using the “terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States,” consistent with Section 1 of the Executive Order, please answer the following:

2.2.1 Progress for Federal Financial Assistance Awards

See section 5.3.

2.2.2 Progress for Federal Procurement

2.2.2.1 New Sources of Made in America Products

For Procurement Only: Please provide at least one story describing agency success in identifying and supporting new sources of Made in America products (e.g., a firm the agency has not utilized in the past three years). Please be as specific as possible, identifying at a minimum the company name, location of the company, and the product involved.

DLA identified a new source for cut-resistant gloves. DLA received quotes from two distributors for 72 pair of cut-resistant gloves, both offering gloves manufactured in Sri Lanka. During discussions, both offerors were notified of the domestic end item preference. One offeror re-quoted, offering U.S. manufactured gloves made in Fayette, Alabama. Although the price was higher than for the foreign product, the Buy American evaluation factor made the domestic offer the best value and the award was made to this offeror.

The Air Force has successfully identified new American made resources for DAF launch vehicles as well as other products. In the last six months, our launch facilities (now U.S Space Force) have moved from the Russian made RD-180 engine to a domestically produced engine. Leveraging Other Transaction Authority, competition and using public-private partnerships enabled the development of the rocket propulsion system and launch services that utilizes domestic engines. DAF has also participated in the Gulf Coast Procurement Opportunities Conference in Mobile, Alabama, in February 2022. At that event, DAF held sessions with more than 20 American-owned small businesses seeking to provide USA products and services to the USG. Prior to the event, DAF was unaware of these U.S. services, construction and commodity companies and is part of our outreach to identify more domestic companies offering US made products.

2.2.2.2 Products Newly Sourced from Domestic Sources

For Procurement Only: Please identify one or more products that demonstrate agency success in utilizing a Made in America product where the product purchased was previously not sourced domestically or in utilizing a product that has greater Made in America content than previously. This can include the elimination of a previously used

waiver or the purchase of a product with greater American content than previously, even if no waiver was involved.

The cut-resistant glove described under section 2.2.2.1 is used to protect the hands from cuts in hazardous situations. The previous source manufactured the glove in Sri Lanka. DLA identified a domestically made and technically acceptable alternative which is possibly the only U.S. manufacturer of the cut-resistant glove.

The Navy Fleet Replenishment Oilers Program implemented a change to transition to a domestically manufactured generator. The prime contractor selected generators that will be manufactured in Wisconsin. This transition to domestically manufactured generators supports a more affordable ship and improves fuel efficiencies and costs over the expected lifespan. Further, the program has realized increases in overall domestic sourced oiler components, which already included: auxiliary equipment (including pumps); propulsion equipment (including engines, reduction gears, and propellers); shipboard cranes; spreaders for shipboard cranes; and anchor chains.

The Ship-to-Shore Connectors Program awarded contracts, under Public Law 97-219, to a Mississippi firm to build composite parts for the legacy and new landing craft. Many of these parts were previously being built in Europe.

2.2.3 Participation in Hollings Manufacturing Extension Partnership

To advance Section 7 of the Executive Order, please identify the item or items the agency has chosen for engagement with the Hollings Manufacturing Extension Partnership (MEP) in order to reduce the need for waivers for that item. Describe the reason the item or items were chosen, the status of the project, and the progress made to date.

The Department does not have any updates to its participation in the Hollings MEP for this reporting period.

3. Report Element 2 – Analysis of Products Not Subject to Made in America Laws

*EO Section 12(b). Please provide an analysis of goods, products, materials, and services **not subject** to Made in America Laws, if any. For the purposes of this question, “goods, products, materials, and services not subject to Made in America Laws” includes items obtained for resale, rather than for government use; items obtained for use overseas; and services not covered by Fly America or the Cargo Preference Act. (Note that the analysis of goods, products, materials, and services where requirements of the Made in America Laws have been waived is being deferred to the IIJA-related report to avoid duplication).*

In FY21, DoD had a total of 14,784 contract actions and \$2.03 billion in obligations where the Made in America laws did not apply. Most of these were products for use outside the United States.

Table 3. Products Not Subject to Made in America Laws

Category of Goods or Services	FY21 Actions	FY21 Obligations
Items obtained for resale	73	\$5,528,167
Items obtained for use overseas	14,711	\$2,024,993,533

Figure 1 shows the most common product service codes based on contract action count for the products not subject to Made in America laws. The majority of actions were for bulk fuel used overseas.

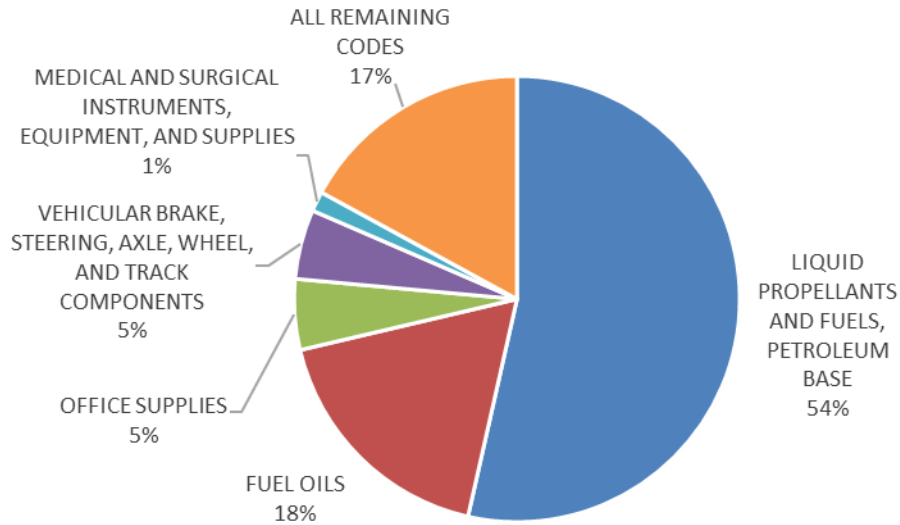


Figure 1. Top Product Service Codes for Products Not Subject to Made in America

Figure 2 shows the most common countries of origin based on contract action count for the products not subject to Made in America laws.

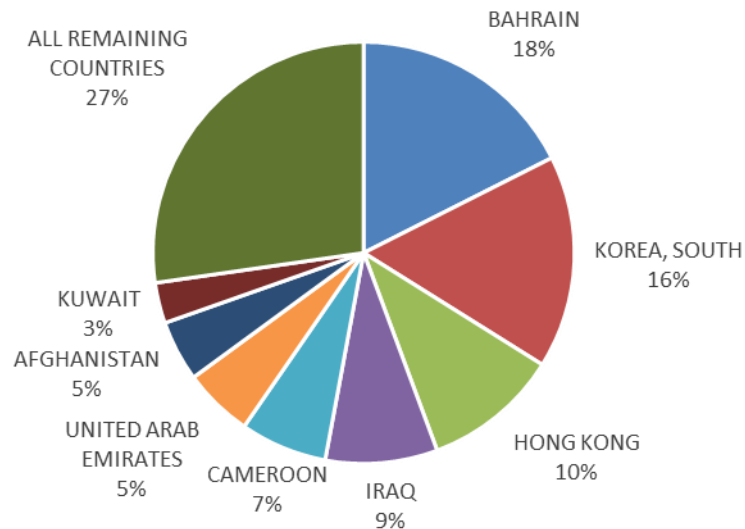


Figure 2. Top Countries of Origin for Products Not Subject to Made in America

Appendix 1 contains data tables showing the top 25 product service codes with country of origin for all products not subject to Made in America.

4. **Report Element 3 – Analysis of Spending as a Result of Trade Agreements Act Waivers**

EO Section 12(c). No reporting needed. (Note that the analysis of spending as a result of waivers issued pursuant to the Trade Agreements Act of 1979 is being deferred to the IJA-related report to avoid duplication).

This section left blank per OMB guidance.

5. **Report Element 4 – Changes to Recommendations for Increasing Federal Buys of U.S.-Made Products**

EO Section 12(d). Recommendations for how to further effectuate the policy set forth in section 1 of EO 14005.

5.1 **Collaboration with Department of State on Microelectronics**

Please provide an update on the collaboration efforts between the Department of Defense and the Department of State to pursue opportunities to use existing or establish new assured sources of microelectronics supply.

The Defense Production Act (DPA) Title III program set up roadmaps for State of the Art, Advanced Packaging, Radiation Hardened Microelectronics, Radio Frequency, and Optoelectronics in support of weekly Defense Microelectronics Activity (DMEA) meetings. As part of the nation's efforts to sustain the microelectronics capability necessary for national and economic security, and in support of EO 14017, America's Supply Chains, the Department has awarded a \$117 million agreement to GlobalFoundries (GF). GF will transfer its 45 nanometer (nm) silicon-on-insulator (SOI) semiconductor manufacturing process from its Fab 10 facility in East Fishkill, New York, to its Fab 8 facility in Malta, New York. In addition, trainings have been scheduled for Scalable Asymmetric Lifecycle Engagement (SCALE) and National Microelectronic Security Training Center (MEST).

The authors of this section of the report were not able to identify any direct DoD collaboration with the Department of State these efforts.

5.2 **Build America, Buy America Implementation Plan**

In order to effectuate the Build America, Buy America Act, please provide a Build America, Buy America Implementation Plan that explains agency's plan of action and milestones to apply a Buy America preference to Federal financial assistance programs for infrastructure, while keeping projects on time, on task and on budget. An implementation plan outline has been provided in Appendix - BABA Implementation Plan Example Outline that is illustrative and that agencies may wish to use for their plan. At a minimum, agencies should address each section listed in the outline. If an agency already

has a plan or other documentation that meets the objective of this request, that can be submitted in replacement of or supplementary to the implementation plan.

BABA Act Implementation Plan for the Department of Defense

The BABA Act was signed into law on November 14, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA). The DoD has taken several steps to comply with the mandates in the BABA Act that require domestic preference for certain activities supported by DoD-funded assistance awards. The BABA Act requires, for any assistance awards made on or after May 14, 2022, the following domestic 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.
- (3) All construction materials are manufactured in the United States. This means all manufacturing processes for the construction material occurred in the United States.

Waiver requirements

In addition to the domestic preference requirements, the BABA Act also allows for waivers both for individual awards and for broad categories of awards. Such waiver decisions can be made by the head of an agency. For the purposes of the Department the term “head of agency” means either the Secretary of Defense or the Secretaries of the Military Departments. Regardless of the waiver issuing authority, waivers must be posted on a publicly accessible website for a period of at least two weeks. For waivers affecting more than one award, a full month posting on a public website is required.

Agencies seeking waivers from BABA Act requirements must allow for public comment through their public waiver posting and must respond to any comments received. Once all comments have been adjudicated and the waiver has been posted for the required period of time, the waiver request can be granted.

According to statute and to OMB guidance, the Department can issue waivers based on the following rationales:

- Public Interest Waiver: The agency head may determine that applying the domestic content procurement preference would be inconsistent with the public interest.
- Nonavailability Waiver: The agency head may determine that 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.
- Unreasonable Cost Waiver: The agency head may determine that 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.

Department Actions to Date:

In response to the new requirements under the BABA Act, the Department has conducted a survey of programs that may be impacted. This survey is also required by the BABA Act statute. In addition, the Department has requested from grants managers whether waivers would be required from BABA Act requirements. Through the survey, the Department identified three programs impacted by the BABA Act:

The Department generally conducts infrastructure programs via contracts. In fact, most of the Department's business is carried out via contracts; the Department gives out only around 1% of assistance awards made by the Federal government.

The Department has issued policy requirements for all infrastructure awards issued after May 14, 2022, to ensure they are compliant with BABA Act provisions. On April 28, 2022, the Office of the Under Secretary from Research and Engineering (OUSD(R&E)) issued Grants Information Notice-22-01 which directed DoD Component grants managers to include language in all Funding Opportunity Announcements (FOAs) for infrastructure programs about the domestic procurement requirements under the BABA Act. The document also directed grants managers to include terms and conditions specifying the BABA Act requirements on all awards arising from infrastructure programs. This language was approved by OMB before it was included in the policy document.

Department grants managers looked into the specifics of program activities and at the BABA Act requirements and have since determined that some waivers would likely be in the public interest.

Current and Ongoing Implementation Efforts

The work remaining for the Department in the implementation of the BABA Act is focused on waiver mechanisms and authorities, as well as better understanding the needs and capabilities of the awardee community. The Department is in the process of developing waiver policies for DoD Components. A key part of these policies is the delegation of authority to the appropriate level for making decisions. For DoD Components that are not part of a Military Department's chain of command, the Secretary of Defense must either make waiver determinations or delegate authority to the appropriate level to allow DoD Components to make such waivers on the Secretary's

behalf. Once the level of delegation is determined, DoD Components that issue assistance awards for infrastructure programs will be able to pursue such waivers as are needed.

The Department is also examining resources for posting waiver requests on public websites. At present, the DoD Grants Policy Office has added language indicating that the Department is examining the need for waivers and that links to waiver requests from Components will be placed there as they become available. In the long term, the Department plans to use the website resources from the GSA once they come online. Other policies and procedures for DoD Component waiver determinations will be developed once waiver delegation authority from the Secretary has been finalized.

Finally, the Department is looking to leverage the interagency's outreach efforts with industry and other stakeholders to the maximum extent practicable to determine what additional policies or resources may be necessary. Most of the Department's infrastructure programs are carried out via the acquisitions process through contracts. Since there are a very limited number of infrastructure programs carried out via assistance awards, The Department does not believe there is sufficient benefit in conducting stakeholder outreach independent of that conducted by OMB and interagency partners. Not only will this approach limit duplication and overlap with other agencies activities, it will promote better harmonization across the federal government. The Department looks forward to working with OMB, other Federal agencies, and Congress to ensure that the requirements of the BABA Act are met for all DoD-funded assistance awards for infrastructure.

5.3 Report on Federal Financial Assistance Infrastructure Programs

*Please provide a copy of the 60-day report, required by law, in accordance with M-22-08, "Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act."*³

Three DoD grants Components reported that they currently maintain some programs that may be impacted by the IJA/BABA Act. These organizations are the National Guard Bureau (NGB), the U.S. Army Medical Research Acquisition Activity (USAMRAA), and the Office of Local Defense Community Cooperation (OLDCC). Below is information provided by these DoD Components in response to the report inquiry in February 2022:

³ For those agencies that do not have Federal financial assistance programs that are subject to the Act, the agency should submit a "report" (i.e., memo) that provides that statement. The report should be submitted to Congress and OMB (via MBX.OMB.MadeInAmerica@omb.eop.gov), but the agency does not have to submit the report to the Federal Register.

The report should be submitted to each appropriate congressional committee for the agency as well as the Committee on Homeland Security and Governmental Affairs, the Committee on Commerce, Science, and Transportation, the Committee on Environment and Public Works, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Armed Services of the Senate; and the Committee on Oversight and Reform, the Committee on Armed Services, and the Committee on Transportation and Infrastructure of the House of Representatives.

5.3.1 NGB Infrastructure Report

NGB programs currently under the Catalog of Domestic Assistance (CFDA) number 12.400 "Military Construction, National Guard" are impacted by the IIJA/BABA Act.

Given that Section 70914 of the IIJA does not go into effect until May 2022, NGB reports that there are no deficient programs as of 2 February 2022.

Given that Section 70914 of the IIJA does not go into effect until May 2022, NGB reports that there are no inconsistent programs as of 2 February 2022.

5.3.2 USAMRAA Infrastructure Report

USAMRAA's Infrastructure Program Name	USAMRAA's Infrastructure Award Number	Description of the type of infrastructure project(s)	Amount of Fed funds each FY	Other Info (optional)
Fisher House Foundation (AL/CFDA #12.460) Public Law 115-31	W81XWH-17-1-0639	Congressionally-directed assistance to the Fisher House Foundation, Inc. The Fisher House Foundation, Inc. builds homes at military and veterans medical centers to provide lodging to family members supporting a wounded, seriously ill, or critically injured military patient.	\$5,000,000	Total award value \$25,000,000

USAMRAA Programs Applicability of Buy American Preference

Grant #	Relevant domestic content procurement preference referenced in award? List any that apply from SEC. 70913(b)(2)(A)-(I); If "None" indicate that below and go to next question.	Deficient Program? Y/N Definition: All infrastructure programs that do not apply the requirements of the Buy America Preference which require the iron, steel, manufactured products, and construction materials used in these projects are produced in the United States or is subject to a waiver.	Waiver from Buy American Act? ⁴ Y/N/NA
W81XWH-17-1-0639	None at this time.	No deficient programs as of 2 FEB 22.	N

⁴ The waiver data is not required for the public (Federal Register) report mandated by Public Law 117058. However, it was required by OMB (memo M-22-08) and DoD in this data call.

5.3.3 OLDCC Infrastructure Report

The OLDCC has identified programs that may provide Federal assistance for infrastructure or construction and thus may be subject to domestic content procurement preferences. The OLDCC has published terms and conditions that are incorporated in all relevant grant awards and requires compliance with the BABA Act. These requirements are available through the OLDCC website and are briefed to new affected grantees during a grant kick off meeting.

Following are responses to the additional questions in response to M-22-08. M-22-08 requests agencies to provide a list of all infrastructure financial assistance programs, as defined in M-22-08 and the Act that are administered by OLDCC.

1. Current authorities support execution of the following applicable programs:
 - a. Public Schools on Military Installation;
 - b. Defense Manufacturing Community Support;
 - c. Defense Community Infrastructure Pilot; and,
 - d. Transportation Infrastructure Improvements Associated with Medical Facilities Related to Recommendations of the 2005 Defense Base Closure and Realignment Commission.
2. Obligations are expected in FY22 for each of these with the exception of the Transportation Infrastructure Improvements Associated with Medical Facilities Related to Recommendations of the 2005 Defense Base Closure and Realignment Commission Program where the last obligations for funds occurred in FY15. For the other active programs where FY22 and/or future obligations are anticipated, or further authorizations are provided, requirements of the IJA will be incorporated into the management of these programs and published in any future public notifications for these programs.
3. Please identify on your list which of these infrastructure programs are “deficient,” as defined in Public Law 117-58, § 70913(c) and referenced in M-22-08 and the Act.

Response: None of the programs identified above would currently be considered deficient.

4. Identify on your list which of these infrastructure programs are currently inconsistent with IJA section 70914 regardless whether or not the program received funding from IJA.

Response: Currently, OLDCC infrastructure programs do not provide for a waiver to these requirements and, while OLDCC does not plan to execute any waivers, none would currently be considered inconsistent with IJA section 70914.

6. **Conclusion**

This report outlines the continued DoD efforts and positive outcomes under the Made in America executive order.

The Department is committed to building on these actions to realize the goals of the executive order to build domestic capacity and capability, especially for critical items and materials vital to our mission and national defense.