

ALERT

White House Executive Order Seeks to Strengthen Application of “Buy American” to Federal Procurement for Infrastructure Projects

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On January 31, 2019, President Trump signed an Executive Order (EO) reinforcing the Administration’s commitment to promote the use of domestically produced steel, aluminum, iron, concrete, cement, lumber, and “other manufactured products” in federal government procurement for infrastructure. The “Strengthening Buy-American Preferences for Infrastructure Projects” EO is a continuation of the President’s April 18, 2017, “Buy American and Hire American” EO 13788, seeking to “maximize . . . through terms and conditions of federal financial assistance awards and federal procurement, the use of goods, products, and materials produced in the United States.”

The Order directs department and agency heads to take actions to ensure the spirit of the “Buy American” policy is implemented in federal financial assistance awards. First, within 90 days, agency heads must “encourage recipients of new federal financial assistance awards pursuant to covered programs” to use domestically produced iron, aluminum, steel, cement, and other manufactured products. Agency and department heads will be required to include these efforts in a report to the President. Second, in the same report, agency and department heads will also be required to describe “any tools, techniques, terms, or conditions” that have or could be used to maximize compliance with Buy American policies. Agency and department heads will have 120 days to complete this report, 30 less than the 150-day period in EO 13788.

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Notably, the Order covers a broad range of products aside from just **steel** and **iron**. Specifically, it also covers “**manufactured products**” – *i.e.*, “materials composed in whole or in part of **non-ferrous metals** such as **aluminum; plastics** and **polymer-based products** such as **polyvinyl chloride pipe; aggregates** such as **concrete; glass**, including **optical fiber**; and **lumber**.” The Order also broadly defines “infrastructure project” as “a project to develop public or private physical assets that are designed to provide or support services to the general public” across numerous sectors. Listed sectors include:

- Roadways, Bridges, Railroads, and Transit
- Fossil-fuel, Renewable, Nuclear, and Hydroelectric Energy Production, Generation, and Storage
- Gas, Oil, Natural Gas, and Propane Distribution Systems
- Drinking Water, Stormwater, and Sewer Infrastructure
- Cybersecurity and Broadband Internet

“Covered programs” under the Order generally encompass programs focused on providing “federal financial assistances for alteration, construction, conversion, demolition, extension, improvement, maintenance, reconstruction, rehabilitation, or repair of an infrastructure project.”

This Order provides a significant opportunity for a wide range of domestic industries to make their voices heard as federal government agencies develop their reports to maximize the use of domestically produced products in federal government procurement of infrastructure. Wiley Rein LLP is well positioned to work closely with industries in developing Buy America/n-related recommendations and proposals for these agencies to consider.

The full text of the “Strengthening Buy-American Preferences for Infrastructure Projects” EO is available [here](#).

John Allen Riggins, a Law Clerk in Wiley Rein's International Trade practice, contributed to this alert.