

ALERT

New Executive Order Strengthens Buy American Requirements

April 18, 2017

Today, President Trump signed a new Executive Order (EO) aimed at strengthening existing domestic preference policies on government-funded projects. In keeping with his campaign promise to “Buy American and Hire American,” the EO seeks a “more muscular Buy American policy” that maximizes domestic content and minimizes waivers and exceptions to the Buy American requirements. This is a significant development that will benefit U.S. manufacturers and their workers. The EO also aims to curb fraud and abuse with respect to guest worker/H-1B visas.

While the text of President Trump’s Buy American EO has not yet been released, during a briefing on April 17, Administration officials indicated that there are four main components of the EO:

- First, the **EO directs federal agencies to fully monitor, enforce, and comply with Buy American requirements.** Every agency will be required to perform an extensive “top-to-bottom assessment” of its implementation of Buy American requirements, including the use of waivers and enforcement efforts relating to these requirements. The EO tasks the U.S. Department of Commerce (Commerce) with coordinating efforts among government agencies and providing a report to the President within 220 days with recommendations on how to strengthen Buy American requirements and close existing loopholes.
- Second, the **EO calls for limiting the use of waivers and exceptions to the Buy American requirements.** Specifically, the EO requires that agencies define the “public interest” waiver more narrowly and that the determination of whether a

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public interest waiver is warranted be elevated to the head of the relevant agency. Notably, in reviewing bids on government contracts, agencies will be able to take into account unfair trade activities such as dumping and subsidization.

- Third, the **EO seeks fair and reciprocal access to government procurement under U.S. free trade agreements (FTAs)**. Specifically, the EO requires that the Office of the U.S. Trade Representative and Commerce evaluate whether our FTAs have weakened Buy American requirements and if they provide the U.S. with reciprocal access to the government procurement of our trading partners. According to one Administration official, “if it turns out America is a net loser,” then the Buy American waivers in our FTAs may be “renegotiated or revoked.”
- Fourth, the **EO reaffirms the “melted and poured” standard**, which requires that all manufacturing processes take place in the U.S. in order for steel to be considered produced in the United States. According to Administration officials, this standard is key to ensuring that the benefits of Buy American are “felt throughout the supply chain.”

Although the immediate impact of the EO is not certain, it will likely result in fewer Buy American waivers, heightened enforcement activity to ensure compliance, and, ultimately, increased government procurement opportunities for U.S. manufacturers. To take advantage of new opportunities and to ensure compliance with Buy American laws and policies, it is important that companies doing business in the U.S. keep abreast of any new developments on this front and seek counsel where questions arise.