

Small Business Notes

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Federal Trade Commission (FTC) Announces Plans for Rulemaking on Various Business Uses of Artificial Intelligence (AI)

As noted in the May issue of Small Business Notes the federal Equal Employment Opportunity Commission (EEOC) and the Department of Justice (DOJ) published guidance on business use of artificial intelligence in employment decisions. This month the Federal Trade Commission (FTC) announced that it will be releasing, by end of June, an Advanced Notice of Preliminary Rulemaking directed to making rules “...to curb lax security practices, limit privacy issues, and ensure that decision making using AI does not result in unlawful discrimination.” The FTC expects a very short comment period of sixty days from publication of the Advanced Notice. The announcement is number RIN 3084-ABL6 available on [Reginfo.gov](https://www.reginfo.gov).

Office of Management and Budget Publishes Guidance on Buy American Requirement

On April 18, 2022, the Office of Management and Budget published a memorandum (M-22-11) relating to implementation of the Build America, Buy America Act (P.L. 117-58 sections 70901-52).

The act provides that none of the federal financial assistance made available to non-federal entities for infrastructure construction may be obligated unless all the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

For purposes of the act the following definitions apply:

- “infrastructure” includes roads, highways, bridges, public transportation, dams, ports, harbors, and other maritime facilities, intercity passenger and freight railroads, freight and intermodal facilities, airports, water systems, electrical transmission facilities, utilities and broad band infrastructure.

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- “federal financial assistance” means grants, cooperative agreements, direct assistance, loan guarantees, loans, direct contribution of property.
- “non-federal entity” means states, local governments, Indian tribes, Institutions of higher learning, and non-profit organizations. Significantly, it does not include for profits businesses or organizations.
- The actual preferences are:
All iron and steel—from melting stage through the application of coatings—are produced in the United States.
- All manufactured products used were manufactured in the United States and the cost of all components manufactured in the United States is greater than 55 percent of the total cost.
- All manufacturing processes for construction materials occurred in the United States.

Reminder: Calculations for Determination of Small Business Status Must Include Affiliates

Businesses seeking to obtain or retain small business status under U.S. Small Business Administration rules and definitions (for example, for participation in small business preferences for federal contracts) are reminded that the computations of number of employees and business revenues must include those numbers for any affiliate businesses. Affiliation is determined if one business entity has the ability to control the other(s) or if a third party has the ability to control all the businesses. Control is determined by the presence of factors like common ownership and common management.

Errors can be costly. On June 2, 2022, the Department of Justice announced a settlement of \$5.2 million between Numet, a Connecticut manufacturer, and the United States for settlement of five years of incorrect claims through which Numet received twenty two small-business-set-aside-contracts. Significantly, the Department of Justice indicated that the settlement might have been greater had not Numet voluntarily disclosed its ineligibility and cooperated in the government’s investigation.

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Past issues of Small Business Notes are available on the Department of Employment and Economic Development website at [Small Business Notes](#)

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