On or After October 23, 2023 and before March 20, 2025; Q&As for Infrastructure Investment and Jobs Act - Build America, Buy America Act and Implementation of the OMB Final Guidance in 2 CFR 184 and 200 For Federal Financial Assistance Programs

Updated January 5, 2026

Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind States or the public in any way. This document is intended only to provide clarity regarding existing requirements under the law or agency policies.

1. What does the Build America, Buy America Act (BABA or the Act) require?

The BABA, part of the Infrastructure Investment and Jobs Act, Pub. L. 117-58 (Nov. 15, 2021), establishes several procedural and substantive requirements with respect to Buy America.

The procedural requirements under BABA, generally focused on Buy America implementation, include requirements for agencies to review existing Buy America preference requirements, submit reports to the Office of Management and Budget (OMB) and to Congress, review waivers of general applicability, and coordinate with the Made in America Office (MIAO) within OMB in the processing of waivers. See BABA Sections 70913(a) and (b); 70914(d); and 70923(b).

The substantive requirements under BABA include a Buy America preference that all Federal agencies must apply to any Federal financial assistance program for infrastructure that is not already subject to existing Buy America requirements for the relevant categories. See BABA Sections 70914(a) and 70917(a).

2. Do FHWA's existing requirements for steel/iron items and manufactured products continue to apply?

Yes. BABA Section 70917(a) provides that the Buy America requirements under Section 70914 apply only to the extent that Federal agencies do not already apply a Buy America preference as described in Section 70914 to steel, iron, manufactured products, and construction materials. This provision clarifies that Section 70914 of the Act does not supplant FHWA's existing Buy America policies and provisions

that meet or exceed the standards required by the Act, such as its requirements for iron and steel under 23 U.S.C. 313.

3. Does BABA require the application of Buy America to any new categories of products for Federal-aid highway projects?

Yes. BABA Section 70914(a) requires FHWA to extend coverage of Buy America to “construction materials.” Since 23 U.S.C. 313 does not specifically apply to construction materials, the BABA requirements for construction materials apply to Federal-aid highway projects.

4. What guidance is available concerning the application of Buy America to construction materials?

On October 25, 2023, OMB issued Memorandum M-24-02 titled "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure." The Memorandum provides supplemental implementation guidance on: (1) the application of a Buy America preference to Federal financial assistance programs for infrastructure; and (2) the process for waiving such a Buy America preference - including the circumstances under which waivers may be justified as consistent with applicable law and policy.

On August 23, 2023, OMB published Final Guidance in the Federal Register implementing BABA's provisions at 2 CFR part 184 and revising 2 CFR 200.322 ("BABA Guidance") (88 FR 57750).

5. When does the updated BABA standards with respect to construction materials under the OMB Guidance at 2 CFR part 184 become effective?

The BABA Guidance at 2 CFR part 184 generally applies to all Federal awards obligated on or after October 23, 2023 (2 CFR 184.2(b)). Awards obligated between May 14, 2022, and October 23, 2023, are subject to the requirements stated in OMB Memorandum M-22-11 (2 CFR 184.2(b)).

However, if an infrastructure project previously received a Federal award obligated on or after May 14, 2022, but before October 23, 2023, and the project receives an additional Federal award obligated within one year of October 23, 2023, the additional Federal award is subject to OMB Memorandum M-22-11 (2 CFR 184.2(c)). Federal awards for an infrastructure project obligated after October 23, 2024, are subject to the BABA guidance, regardless of whether it applied to previous awards for the project (2 CFR 184.2(c)).

6. What is a construction material under the BABA Guidance?

Pursuant to the definition in 2 CFR 184.3, construction materials are articles, materials, or supplies that consist of only one of the following items. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of a material as a construction material:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- fiber optic cable (including drop cable);
- optical fiber;

- lumber;
- engineered wood; or
- drywall.

7. What are the Buy America standards that apply to the manufacturing process for construction materials?

Section 184.6 of the BABA guidance establishes the standards for each construction material to be considered "produced in the United States" and therefore BABA-compliant.

Non-ferrous metals: All manufacturing process, from initial smelting or melting through final shaping, coating, and assembly occurred in the United States.

Plastic and Polymer-based products: All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

Glass: All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

Fiber Optic Cable (including drop cable): All manufacturing processes, from the ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for nonferrous metals, plastic and polymer-based products, or any others.

Optical Fiber: All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

Lumber: All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

Drywall: All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

Engineered Wood: All manufacturing processes, from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

8. What if a listed construction material item could be classified in multiple categories?

The BABA guidance at 2 CFR 184.4(e) provides that an article, material, or supply should only be classified into one of the following categories: (1) iron or steel products; (2) manufactured products; (3) construction materials; or (4) section 70917(c) materials. Construction materials generally consist of only one of the items listed under the definition in 2 CFR 184.3 and provided in Q#6; however, minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of that material as a construction material. A construction material should not be considered to be an iron or steel product, manufactured product, or section 70917(c) material. Classification of the category must be made based on the status of article, materials, or supply at the time it is brought to the work site for incorporation into an infrastructure project (2 CFR 184.4(e)). The work site is generally the location of the infrastructure project at which the materials will be incorporated (2 CFR 184.4(e)).

FHWA’s existing requirements and processes continue to apply to steel/iron items and manufactured products, including application of Buy America to steel/iron items in manufactured products (see Question 12 at FHWA's Buy America Q and A for Federal-aid Program).

9. What if a construction material is combined with a steel/iron item, a manufactured product, or another construction material?

The definition of "construction material" in 2 CFR 184.3 makes clear that a construction material is a material that consists of only one of the listed items, with an exception for minor additions of articles, materials, supplies, or binding agents to a construction material. Therefore, items that consist of two or more of the listed construction materials that have been combined together to create a product with different properties than the individual construction materials, and items that include at least one of the listed materials combined with a material that is not listed to create a product with different properties than the individual materials, should be generally treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material. Construction materials combined with iron or steel products may also be classified as predominantly iron or steel manufactured products and therefore subject to FHWA's existing requirements for iron or steel.

Accordingly, should any of the listed construction materials be combined together with a second listed material or with a non-listed item, then the product should be considered either a manufactured product or a steel/iron item, as appropriate.

10. Do construction materials include cement or asphalt mixtures?

No. Under BABA Section 70917(c) and the BABA Guidance, construction materials do not include cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives (known as "section 70917(c) materials").

The Preamble to the BABA Guidance states that section 70917(c) materials should also not be considered, on their own, to be manufactured products. The Preamble also states that section 70917(c) materials may be combined together to produce a manufactured product, such as precast concrete. The Preamble also states that to the extent that section 70917(c) materials are only combined as an unsettled mixture without final form when reaching the work site, such as wet concrete or hot mix asphalt, the unsettled mixture should not be considered a manufactured product.

Aggregates combined with minor additions of other materials that do not impact the commonsense identification of the material as an aggregate, such as gravel combined with additives, should still be classified as a section 70917(c) material. Aggregates mixed with other aggregates, such as sand mixed with gravel, should also be considered section 70917(c) materials.

11. Do the BABA requirements for construction materials apply to construction materials used on a temporary basis for construction of a Federal-aid project?

No. According to OMB Memorandum M-24-02, the Buy America preference for construction materials only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project, nor does the Buy America preference for construction materials apply to equipment and furnishings that are used at or within the finished infrastructure project, but are not an integral part of or permanently affixed to the structure.

12. Does the FHWA general waiver for manufactured products remain in effect?

Yes. The FHWA general waiver for manufactured products remains in effect for projects obligated during the time period addressed in this set of Q&As (October 23, 2023 and March 19, 2025). 48 FR 53099 (Nov. 25, 1983).

FHWA has removed electric vehicle (EV) chargers from the Manufactured Products General Waiver; waived Buy America requirements for steel and iron except for predominantly steel or iron housing components (88 FR 10619). See https://www.fhwa.dot.gov/construction/contracts/buyam_qaev/ for more information on this waiver.

13. How should States comply with the application of Buy America to construction materials?

Under 23 CFR 635.410(d), States are to use standard State and Federal-aid contract procedures to ensure compliance with Buy America.

State DOTs should modify any applicable standard procedures and contract specifications in order to ensure compliance with the BABA requirement for construction materials, which is now in effect following the expiration of the DOT transitional waiver.

14. May States use the step certification process that is utilized for steel and iron items?

States may utilize any process that ensures compliance with the application of Buy America to construction materials. This includes a step certification process that is similar to the process used for steel/iron items.

15. Who do I contact for additional information?

For information or inquiries related to Buy America, please contact FHWABuyAmerica@dot.gov

16. What relevant information is needed for FHWA to process a Buy America waiver?

Pursuant to Section VI of OMB Memorandum M-24-02, FHWA and other Federal agencies are expected to provide the following information, as applicable, when submitting a proposed waiver to the Made in America Office for review:

- Waiver type (nonavailability, unreasonable cost, or public interest)
- Recipient name and Unique Entity Identifier (UEI)
- Federal awarding agency organizational information (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code)
- Financial assistance listing name and number
- Federal financial assistance program name
- Federal Award Identification Number (FAIN) (if available)
- Federal financial assistance funding amount
- Total estimated infrastructure expenditures, including all Federal and non-Federal funds (if applicable).
- Infrastructure project description and location (to the extent known).
- In the case of general applicability waivers, a description of the relevant Federal program(s)-including information on the size and scale of the program(s), an estimate of the dollar amount of

Federal financial assistance that would be subject to the waiver, and an estimate of how many infrastructure projects would be subject to the waiver.

- List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country(ies) of origin (if known), and relevant Product and Service Code (PSC) and North American Industry Classification System (NAICS) code for each.
- A description of efforts made (e.g., market research, industry outreach, etc.) by the Federal awarding agency and, in the case of a project or award specific waiver, by the recipient, in an attempt to avoid the need for a waiver. Such a description may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
- Market research, where applicable, should include relevant details, including who conducted the market research, when it was conducted, sources that were used, and the methods used to conduct the research.
- Anticipated impact if no waiver is issued.
- For final waivers, any relevant comments received through the public comment period, and the agency's response to those comments.

The purpose is to ensure that FHWA has adequate information to perform due diligence, that OMB/MIAO has sufficient information to determine whether the proposed waiver is consistent with law and policy, and that sufficient information is available for public review. Information provided for public review should help interested manufacturers gauge the demand for products for which agencies are considering waiving a Buy America preference. The recipient should perform and document reasonable search efforts on the domestic availability of the item in the current United States market, including reasonable efforts to identify the domestic content of the item at issue. Any due diligence performed up-front by the recipient could aid in the expeditious processing of the recipient’s waiver request.

17. Which Buy America standard applies to the following products?

Product	23 U.S.C. 313	BABA Sec. 70914
Iron and Steel	Yes	No
Construction Materials (as discussed in Questions 6 through 11 and 13)	No	Yes
Manufactured Products (as discussed in Questions 9, 10, and 12)	FHWA’s general waiver for manufactured products waives Buy America requirements for manufactured products for projects obligated during the time period addressed by this set of Q&As (October 23, 2023 and March 19, 2025).	No
Asphalt, cement, and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate	No	Generally, no. See Q#10 for more information.

binding agents or additives		

18. Does BABA apply to Emergency Relief (ER) funded projects?

As provided under BABA Section 70912(4) and 2 CFR 184.8(a), BABA does not apply when the ER event is based on a major disaster declaration issued by the President under the Stafford Act (42 U.S.C. 5121 et seq.).

However, BABA does apply where no Stafford Act declaration has been issued and the ER event is based solely on a Governor of the State issuing an emergency or disaster proclamation.

The FHWA's Buy America requirements for steel, iron, and manufactured products (including the existing general waiver for manufactured products) will still apply to ER funded projects, no matter whether an application is predicated on a Presidential declaration or a Governor's proclamation.