

Pre October 23, 2023: Q&As for Infrastructure Investment and Jobs Act - Build America, Buy America Act

Updated January 5, 2026

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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. BABA Section 70914(d) also provides a process for reviewing existing waivers of general applicability, such as FHWA's general waiver for manufactured products.

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 April 18, 2022, OMB issued [Memorandum M-22-11](#) titled “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.” The Memorandum provides initial guidance on the implementation of BABA, including preliminary guidance addressing the requirement at BABA Section 70915(b) for OMB to define the term “all manufacturing processes” for 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." Memorandum M-24-02 revises and replaces Memorandum M-22-11, although awards obligated on or after May 14, 2022, and before October 23, 2023, are subject to the guidance in Memorandum M-22-11 (2 CFR 184.2(b)). In addition, if an infrastructure project has received a Federal award on or after May 14, 2022 and before October 23, 2023, and that project receives an additional Federal award obligated by October 23, 2024, that additional Federal award is subject to the requirements in Memorandum M-22-11 (2 CFR 184.2(c)).

5. When did the BABA requirement for construction materials become effective on Federal-aid highway projects?

BABA Section 70914(a) provided that the new domestic preference requirements (including the requirement for construction materials) would become effective on May 14, 2022, which is 180 days after the date of enactment of the Act. However, DOT also issued a [temporary transitional waiver](#) of the BABA construction materials requirement to allow a reasonable adjustment period for recipients of DOT financial assistance — including States, local communities, Tribal nations, and industrial vendors — to develop and transition to new compliance and certification processes for construction materials. The Temporary Construction Materials Waiver is applicable to awards that were obligated on or after May 14, 2022, and before November 10, 2022.

6. What is a construction material?

According to preliminary guidance in OMB Memorandum M-22-11, “construction materials” includes an article, material, or supply — other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives — that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

7. What are the Buy America standards under Memorandum M-22-11 that apply to the manufacturing process for construction materials

According to OMB Memorandum M-22-11, agencies should consider “all manufacturing processes” for construction materials to include at least the final manufacturing process and the immediately preceding manufacturing stage for the construction material.

8. What if a listed construction material item could be classified in multiple categories under Memorandum M-22-11?

According to OMB Memorandum M-22-11, an article, material, or supply should only be classified into one of the following categories: (1) iron or steel; (2) a manufactured product; or (3) a construction material. For ease of administration, an article, material, or supply should not be considered to fall into multiple categories. Question 10 below explains how to determine if an item should be classified a construction material. If an item is not a construction material, 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. Under Memorandum M-22-11, what if a construction material is combined with a steel/iron item, a manufactured product, or another construction material?

In OMB Memorandum M-22-11, OMB notes that items that consist of two or more of the listed construction materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be 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.

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. Under Memorandum M-22-11, do construction materials include cement or asphalt mixtures?

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

Asphalt concrete pavement mixes are typically composed of asphalt cement (a binding agent) and aggregates such as stone, sand, and gravel. Accordingly, asphalt is also excluded from the definition of construction materials.

Applying the preliminary guidance that is applicable to construction materials in OMB Memorandum M-22-11, combining any of these excluded materials with listed construction materials would result in the product being considered a manufactured product.

11. Under Memorandum M-22-11, 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-22-11, 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 for projects obligated between May 14, 2022, and October 23, 2023?

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 (May 14, 2022 and October 23, 2023). 48 FR 53099 (Nov. 25, 1983).

13. Does the BABA standard for manufactured products apply on Federal-Aid highway projects?

No. Because FHWA has an existing statutory requirement applicable to manufactured products (which is waived for projects obligated during the time period addressed in this set of Q&As (May 14 2022 and October 23, 2023)) under the FHWA general waiver for manufactured products discussed in Question 12), the BABA standard for manufactured products under Section 70912(6)(B) does not apply on Federal-Aid highway projects.

14. 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 (see Questions 5, 16, and 17).

15. 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.

16. Who do I contact for additional information?

For FHWA-specific questions, please submit to the Buy America email inbox at FHWABuyAmerica@dot.gov. For questions concerning OMB Memorandum M-22-11, please contact the OMB Made in America Office at MadeInAmerica@omb.eop.gov.

17. What relevant information is needed for FHWA to process a Buy America waiver under Memorandum M-22-11?

Pursuant to Section VII of OMB Memorandum M-22-11, 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 cost of infrastructure expenditures, including all Federal and non-Federal funds (to the extent known)
- Infrastructure project description and location (to the extent known)
- 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 the relevant PSC and NAICS code for each
- A certification that the Federal official or assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor
- A statement of waiver justification, including description of efforts made (e.g., market research, industry outreach), 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 justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
- Anticipated impact if no waiver is issued.
- Any relevant comments received through the public comment period.

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.

18. 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 14)	No	Yes. However, DOT's Temporary Construction Materials Waiver waived this requirement for awards that were obligated on or after May 14, 2022, and before November 10, 2022.
Manufactured Products (as discussed in Questions 9, 12, and 13)	FHWA's general waiver for manufactured products waives Buy America requirements for manufactured products for projects obligated during the	No

	time period addressed in this set of Q&As (May 14, 2022 and October 23, 2023)	
Asphalt, cement, and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives	No	No

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

As provided under BABA Section 70912(4), 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.

Note: 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.