BABA / Buy America Guidance

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| Item Category | Item Definition | Policies | Waivers |
| Steel/Iron | articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.*Predominantly of iron or steel or a combination of both* means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components. | * 49 cfr 661
	+ 5/30/2018
	+ <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VI/part-661>
* 23 CFR 635.410
	+ 12/10/02
	+ <https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-D/section-635.410>
 | When steel and iron materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project |
| Manufactured Products | (1) Articles, materials, or supplies that have been:(i) Processed into a specific form and shape; or(ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. | * Manufactured Products Waiver
	+ 1983
	+ <https://www.fhwa.dot.gov/construction/contracts/831125.cfm>
 | All waived.However, Buy America requirements apply to any steel or iron component of a manufactured product regardless of the overall composition of the manufactured product (e.g., Buy America applies to the steel wire mesh or steel reinforcing components of a precast reinforced concrete pipe). |
| Construction Materials | articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.(1) The listed items are:(i) Non-ferrous metals;(ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);(iii) Glass (including optic glass);(iv) Fiber optic cable (including drop cable);(v) Optical fiber;(vi) Lumber;(vii) Engineered wood; and(viii) Drywall.(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material. | * Bipartisan Infrastructure Law (BIL) / Infrastructure Investment and Jobs Act (IIJA) / BABA
	+ Enacted 11/15/21. Effective 5/14/22 , additional waiver carried through 11/10/22
	+ <https://www.govinfo.gov/content/pkg/PLAW-117publ58/pdf/PLAW-117publ58.pdf>
* Post October 23, 2023: Q&As for Bipartisan Infrastructure Law - Build America, Buy America Act and the Implementation of OMB Final Guidance in 2 CFR Parts 184 and 200 for Federal Financial Assistance Programs
	+ Applicable projects after 10/23/23
	+ <https://www.fhwa.dot.gov/construction/contracts/buyam_qa_baba_post10232023.cfm>
* 2 CFR 184
	+ Enacted 8/23/23, effective 10/23/23
	+ <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-184>
* Waiver of Buy America Requirements for De Minimis Costs and Small Grants
	+ 8/16/23
	+ <https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants>
	+ Q&As for the Waiver of Buy America Requirements for De Minimis Costs and Small Grants
		- May 22, 2024
		- <https://www.fhwa.dot.gov/construction/contracts/buyam_qa_deminimis.cfm>
 | * + - DOT finds that it is in the public interest to issue a waiver of BABA's domestic preferences for iron and steel, manufactured products, and construction materials used in projects funded under DOT-administered financial assistance programs for iron, steel, manufactured products, and construction materials under a single financial assistance award for which:
		- The total value of the non-compliant products is no more than the lesser of $1,000,000 or 5% of total applicable costs for the project; or
		- The total amount of Federal financial assistance applied to the project, through awards or subawards, is below $500,000.
		- In applying the waiver, the “total value of the non-compliant products” does not include the value of those products subject to a separate Buy America waiver. The total value of non-compliant products is the value of all construction materials that are not BABA-compliant that are permanently incorporated into an FHWA-funded project.
		- “Total applicable project costs” are defined as the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement, including materials that are within the scope of an existing waiver. Total applicable project costs include the costs of all steel, iron, manufactured products, and construction materials used in the FHWA-funded project. Cement and cementitious materials; aggregates such as stone, sand, or gravel; and binding agents or additives (known as Section 70917(c) materials in 2 CFR 184.3), standing alone, should not be included in the determination of total applicable project costs. These Section 70917(c) materials, however, may be included as components of manufactured products, in which case the cost of the manufactured product, including the cost of the Section 70917(c) components, should be included in the determination of total applicable project costs.
		- However, the de minimis cost portion of the waiver ( i.e., the first bullet in the finding above) does not apply to iron and steel subject to the requirements of [23 U.S.C. 313](https://www.govinfo.gov/link/uscode/23/313) on financial assistance administered by FHWA.[[6 7](#footnote-6%E2%80%897-p55820)] The small grants portion of the waiver ( i.e., the second bullet in the finding above) does not apply to iron, steel, and manufactured goods subject to the requirements of [49 U.S.C. 22905(a)](https://www.govinfo.gov/link/uscode/49/22905).
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