



Current

# BUY AMERICA, BABA ACT IMPACTS

Overview for PAPA  
Regional Meetings

CHARLIE GOODHART FOR:  
MATTHEW BRIGGS, NPI SECTION CHIEF  
BUREAU OF CONSTRUCTION AND MATERIALS  
MARCH 2023

## Buy America Act of 1982

- Provision of The Surface Transportation Assistance Act
- Extended to purchases made by 3rd party agencies
- Definition of “American-made” becomes more complex
  - All steel and iron components must be mined, melted and manufactured in the United States
  - With an Exception for “Minimal Use”



## Surface Transportation Assistance Act of 1982

- Championed by the Reagan administration
- Addressed concerns about the surface transportation infrastructure
- Added five cents to the per gallon gas tax
  - four cents was dedicated to restore interstate highways and bridges, and
  - one cent for public transit
- Also set a goal of 10% for DBE participation on federal-aid projects



# MANUFACTURED PRODUCTS

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

AGENCY: Federal Highway Administration [FHWA], DOT.

23 CFR Part 635

Buy America Requirements

48 FR 53099

November 25, 1983

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is amending its Buy America regulation to implement procedures required by section 165 of the Surface Transportation Assistance Act (STAA) 1982 (Pub. L. 97-424). Section 165 provides with exceptions that funds authorized for Federal-aid highway projects may not be obligated unless the steel, cement, and manufactured products used in such projects are produced in the United States. The amendments are based on a review of comments received in response to an interim final rule (January 17, 1983) (48 FR 1946) and to amendments to that interim final rule (May 26, 1983) (48 FR 23631) which were issued to temporarily implement section 165. The final rule provides for application of the revised Buy America provisions to steel and cement regardless of project cost. The waiver exempting manufactured products other than steel and cement contained in the January 17, 1983, interim final rule is retained.

EFFECTIVE DATE: The final rule is effective December 27, 1983.

## 1983 Waiver for Manufactured Products

- “Active”*
- Re-evaluation  
Required*
- Coordination with  
AASHTO*



# BABA ACT REQUIREMENTS

The Act requires the following Buy America preference:

- All **iron and steel** used in the project are produced (from the initial melting stage through the application of coatings) in the United States.
- All **manufactured products** used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product
- All **construction materials** are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.



# BABA ACT DETAILS

- Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project.
- For the purposes of this guidance, 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. ...an article, material, or supply should not be considered to fall into multiple categories.
- Any waivers from these requirements must be in writing and meet the requirements...
  - Very extensive process – Ideally as a last resort, this process could be used
  - Long lead-time and still wouldn't be any guarantees it would be granted



# BABA ACT DETAILS

- The IIA finds that **“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**



# MANUFACTURED PRODUCTS

- ...items that consist of **two or more of the listed 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.
- ...the last two manufacturing steps with that process.





# COMPLETED TASKS

- Notifications to Industry, Business Partners, Manufacturers – Continuing Effort
- Developed an ECMS special provision for early contracts
- Changes to Publication 408, Section 106.10 and developed a new Section 106.11
- Identify products like Geotechnical materials, Signals/ITS equipment, Highway Lighting equipment that could be impacted by changes to the existing Manufactured Products Waiver
- Updates to CS-4171/CS-4171LA and eCAMMS including the new product application
- Ongoing: Incorporate the BABA Act requirements into the existing auditing processes



# NOTIFICATIONS

OS-600C (12-15)



July 22, 2022

To: Construction Contractors

Re: Department Notification Regarding the Build America, Buy America Act

Dear Contractor:

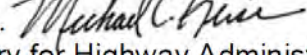
OS-600C (12-15)



DATE: August 17, 2022

SUBJECT: Department Notification Regarding the Build America, Buy America Act

TO: Department Bulletin 15 Manufacturers

FROM: Michael C. Keiser, P.E.   
Acting Deputy Secretary for Highway Administration

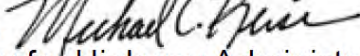
OS-600C (12-15)



DATE: September 26, 2022

SUBJECT: Department Notification Regarding the Build America, Buy America Act

TO: Department Bulletin 15 Non-Domestic Manufacturers

FROM: Michael C. Keiser, P.E.   
Acting Deputy Secretary for Highway Administration



## Impacts to Construction Inspection

- Eliminate Any Confusion – Keep It Simple
- Bulletin 15 Listing = Buy America Compliant
- Adjusting to the new CS-4171 and CS-4171LA Forms
- Monitor/Coordinate with FHWA on Future Waiver Revisions





# DEPARTMENT CERTIFICATION

#1 **Manufacturer, Fabricator, Coater, Precaster**       #2 **Distributor, Supplier or \*Private Label Company**

Listed in **Bulletin #** 8. By signing this document, you are certifying that this product meets the Build America, Buy America Act requirements and conforms to Section 106.11 of Publication 408.

*I certify that the ab  
best of my knowled  
the product(s) liste*

8. NAME (print) : \_\_\_\_\_ TITLE: \_\_\_\_\_

COMPANY NAME : \_\_\_\_\_

SIGNATURE : \_\_\_\_\_ DATE: \_\_\_\_\_

*By Responsible Company Official*

9. List company that sold you the material(s) documented above: \_\_\_\_\_  
(Complete if you checked Block # 2 on line # 7, otherwise leave blank.) (Company Name)

CS-4171 (3-19)



**pennsylvania**  
DEPARTMENT OF TRANSPORTATION  
www.penndot.gov

## CERTIFICATE OF COMPLIANCE



## Current Notice of Proposed Rule Making (NPRM)

- Cost of Components – Definition and How to Incorporate
- Other Construction Material Standards
  - Coatings, Brick, Engineered Wood
- Definitions – Construction Materials, “Predominantly”



## **Current Notice of Proposed Rule Making (NPRM)**

- How to Distinguish between Categories
- Definition and Standards for Fiber Optic Cable and Optical Fibers
- Clarification of the Excluded Materials List
- Definition of a Manufactured Product





# DEPARTMENT RESOURCES

## Pennsylvania Steel Products Procurement Act / FHWA Buy America

This web page addresses questions concerning both the Pennsylvania Steel Products Procurement Act (Act 3) and FHWA Buy America and provides clarification on the acceptance and certification of steel products on PennDOT construction projects.

### Pennsylvania Steel Products Procurement Act (Act 3):

**Act 3 applies to every public works project, which includes PennDOT projects.**

*Use or furnish only steel products produced in the United States in the performance of the contract or any subcontract.*

<https://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

[https://www.penndot.pa.gov/ProjectAndPrograms/Construction/PA\\_Act3/pages/default.aspx](https://www.penndot.pa.gov/ProjectAndPrograms/Construction/PA_Act3/pages/default.aspx)

## Frequently Asked Questions and Answers

[Act 3 / Buy America FAQs & Answers](#)

**Submit new questions to be answered by PennDOT via email to**

[PASteelProcurementAct@pa.gov](mailto:PASteelProcurementAct@pa.gov)

As new questions are answered they may be loaded to the FAQs List.



Current

# BUY AMERICA, BABA ACT IMPACTS

Any Questions can be send to Matt  
Briggs at [mabriggs@pa.gov](mailto:mabriggs@pa.gov)

Thank you!

CHARLIE GOODHART FOR:

*MATTHEW BRIGGS, NPI SECTION CHIEF*

*BUREAU OF CONSTRUCTION AND MATERIALS*

MARCH 2023