

Federal USDOT Question and Answers *(Currently Unavailable)*.

UDOT Specific Question and Answers

For questions not answered below, contact Ken Talbot, UDOT Director for Materials and Pavements,
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General/Specifications

#1A. Question: What are the current de minimis levels that are excluded from the BABA requirements.

Answer (updated 10-2-2023):

DOT finds that it is in the public interest to issue a waiver of BABA's domestic preferences for manufactured products and construction materials used in projects funded under DOT-administered financial assistance programs for manufactured products and construction materials under a single financial assistance award for which:

- No more than \$1,000,000 or 5% of Total Applicable Costs* for the project, whichever is less.
- The total amount of Federal financial assistance applied to the project, through awards or subawards, is below \$500,000**.
- Applies to all projects obligated after 8/16/2023, will be included in special provision 01458S by October 10/23/2023***

*Total Applicable Project Cost – The cost of materials used in the project that are subject to a domestic preference requirement. It includes the cost of materials that are within the scope of an existing waiver, the cost of any manufactured products, the cost of Construction Materials and cost of Iron and Steel Products.

**For small awards, it does not apply to Iron and Steel, and manufactured goods.

*** Does not apply to products covered by product specific waivers (electric vehicle chargers, mass-produced non-ADA accessible vans and minivans).

#1B. Question: The 01455S (Material Quality Assurance - Department Special Provision). I just wanted to ask if this special is only required on federal projects or if we need to include it on state projects. Since the updated special pertains to Buy America I was thinking that it wouldn't be applicable to state projects but I just wanted to check for clarification.

Answer: This special does not need to be included in contracts on state funded projects. But if it were, that would be ok as article 1.11 A specifically says only Federal-aid projects are subject to the BA requirements.

Update Answer (10-2-2023): The Buy America requirements will be moving out of 01455S and put into a new special provision 01458S called Buy America. Same above response applies.

#2. Question: Where is the Certification Form found for certification of Construction Materials

Answer: The form can be found [here](#), which is referenced in Section 01455S, Material Quality Assurance, Article 1.5, paragraph D.

Update Answer (10-2-2023): The Buy America requirements will be moving out of 01455S and put into a new special provision 01458S called Buy America. The form can be found [here](#), which is referenced in Section 01458S, Buy America, Article 1.5, paragraph C.

#3. Question: What does FHWA currently require regarding BABA defined as Manufactured Products and Construction Materials?

Answer: Due to an existing waiver, FHWA does not currently apply the Buy America requirements to manufactured products except for predominantly steel and iron manufactured products and predominantly steel and iron components of manufactured products. FHWA also applies the BABA domestic preference requirements to construction materials.

#4. Question: Does the minimal use provision of greater of 0.1% of contract value or \$2,500 applies only to Iron or Steel items or if it also applies to Construction Material?

Answer (10-2-2023): This minimal use provision only applies to iron and steel. For other materials and products see General/Specifications #1A regarding other De Minimis levels above.

#5. Question: How are small quantity items such as landscape repairs after a sidewalk or ped ramp construction where the contractor will most likely grab the few things he needs to make the repair from the local hardware store?

Answer (10-2-2023):

- See General/Specifications #1A regarding other De Minimis levels above.
- If categorized as Manufactured Item, it would not need to meet Buy America requirements due to a current FHWA waiver.
- For Steel and Iron products, the De Minimis may be used, i.e. the greater of 0.1% of contract value or \$2,500, but required documentation would be needed detailing it.

#6. Question: Regarding 23 U.S.C. 313(h). If a project had any federal funds in any phase must it include Buy America provisions in your state funded Construction and Utility contracts?

Answer: Yes. Section 1518 of MAP-21 amended the Buy America statute at 23 U.S.C. 313 to require the application of Buy America to all contracts eligible for assistance under title 23 within the scope of a finding, determination, or decision under the National

Environmental Policy Act (NEPA), regardless of funding source, if at least one contract within the scope of the same NEPA document is funded with Federal funding provided under Title 23.

Utilities

#1. Question: For FAHP funded projects, do Buy America requirements apply to utility work accomplished using no FAHP funds?

Answer: Yes. Per section 1518 of MAP-21, if the project, as defined by NEPA, has at least one FAHP funded construction contract authorized after October 1, 2012 or at least one FAHP funded Preliminary Engineering contract authorized after January 1, 2013, all federally eligible utility work must meet Buy America requirements regardless of funding source. However, if state law or a legal contract between the utility and the state does not allow for reimbursement, see question number 2.

#2. Question: For FAHP funded projects, do Build America Buy America requirements apply to utility work where State law or a legal contract between the utility and the state does not allow the State DOT to reimburse the utility for relocation costs?

Answer: No. When State law or a legal contract between the utility and the state prohibits State DOTs from reimbursing utilities, the utility work is not eligible for federal reimbursement (23 USC 123(a)). Federally ineligible work is not subject to Build America Buy America requirements.

Questions on Timing

#1. When does the new Build America Buy America Act requirement begin?

Answer: For any federal funds “obligated” after Saturday, May 14, 2022. A waiver was issued by the USDOT extending this further out specifically for Construction Materials to November 10, 2022. Also current waiver is in place also for Manufactured Items, but is under review.

#2. A project that has funds obligated after May 14, 2022, but has contracts issued prior to this date (Or November 10, 2022 for Construction Materials)?

Answer: Any contract issued that has funding obligated prior to those dates, that work is exempt from the new Build America Buy America requirements.

#3. If a Utility Agreement for a particular project was executed prior to Build America Buy America Act requirements going into effect and if the Federal Funds were obligated at that time, would that particular utility relocation be exempt from the Build America Buy America Act certification requirements?

Answer: Yes. The Build America Buy America Act for Construction Materials would not apply.

Questions On Products (alphabetized). Need to meet, Yes or No.

Cured in place pipe (Concrete)

#1 Question: What about cured in place pipes?

Answer: No. The IIJA excludes cement and cementitious materials, and aggregates.

Electric Vehicle Charging Stations

#1 Question: Required to meet Buy America requirements?

Answer: No & Yes.

No - All EV chargers manufactured prior to 7/1/2024 (with final assembly in the United States), and whose installation has begun prior to 10/1/2024, do not need to meet the Build America Buy America Requirements. All EV chargers that are manufactured on or after July 1, 2024, whose final assembly occurs in the United States, and for which the cost of components manufactured in the United States is at least 55 percent of the cost of all components.

Yes - EV charger housing components that are predominantly steel and iron. Predominantly being determined by the cost of the components, where the cost of the steel and Iron components is more than 50 percent.

Yes - Also, all EV chargers that are manufactured on or after July 1, 2024, whose final assembly occurs in the United States, and for which the cost of components manufactured in the United States is at less than 55 percent of the cost of all components.

#2. [FHWA Q&As for Build America, Buy America \(BABA\) Implementation Plan to Enhance Buy America for Electric Vehicle \(EV\) Chargers](#)

Traffic Striping Beads

#1 Question: What about Traffic Striping Beads?

Answer: No. The IIJA finds that “construction materials” includes an article, material, or supply that is or consists primarily of...glass (including optic glass). Items that consist of two or more of the listed Construction Materials, or a material that is not listed, that have been combined together through a manufacturing process, should be treated as

manufactured products. A waiver exists for manufactured products, and they are therefore currently not subject to Buy America requirements. In addition to soda-lime glass, manufacturers include heavy metals arsenic, antimony, and lead to refine and improve the properties of the glass bead. Lead in the form of PbO is added to increase the durability of the glass to withstand harsh road conditions. Arsenic and antimony are used as fining agents that facilitate the removal of gas bubbles from the molten mixture. In addition, both arsenic and antimony are used as decolorizers.

Fiber Optic Cable

#1 Question: What category does a "jacketed" polymer or optical glass fiber optic cable fall into for Buy America? Is it a Construction Material or a Manufactured Item?

Answer (10-2-2023: Construction Material and needs to meet Buy America Requirements. All manufacturing processes, from the initial 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 non-ferrous metals, plastic and polymer-based products, or any others.

Green Bikes and Docking Stations

#1 Question: Do BCycle green bikes and docking stations fall under the Buy America Waiver for Manufactured Products?

Answer: Yes. The products, both the bikes and the docking stations are manufactured from non-ferrous metals, plastic and polymer-based products, and other materials that have been combined through a manufacturing process. This would make them fall under the category of a Manufactured Item, and as such are currently under a waiver from Buy America requirements. FHWA Utah Office concurred on 8/24/2023, "We have reviewed the subject documentation and agreed the subject items to meet the requirements of Buy America".

Plastic Delineator Posts & Base

#1 Question: The base for these are pounded into the ground and the flexible plastic top is then attached. Do you think the base, which is steel, be required to meet the Buy America requirements.

Answer: Yes. Both items will need to meet Buy America and should not be treated as manufactured items.

Polymers

#1 Question: What about Polymers and polymer overlays?

Answer: Yes and No. **Yes**, the IIJA finds that “construction materials” includes an article, material, or supply that is or consists primarily of...polymer-based products. **No.** If the product is used in a polymer overlay, as there is a specific exemption for aggregate binding agents

Epoxies & Thermoplastic Paints (11-14-2023)

#1 Question: What about epoxies & thermoplastic paints?

Answer: No. The IIJA finds that “construction materials” includes an article, material, or supply that consists of only one of the listed items for Construction Materials. Polymer describes the material at a macromolecular level whereas resin describes the material in bulk form. Epoxy is a specific type of two-part resin. Thermoplastics are considered resins that are materials that soften to a liquid in high heat, and then harden again when cooled. Products that through a manufactured process combine other materials besides the polymer into the product, would be considered a manufactured item.

Retroreflective Sheeting (10-5-2023)

#1 Question: Does retroreflective sheeting count as a manufactured item under the current Buy America waiver?

Answer: Yes. Retroreflective sheeting manufacturing comprises of the steps of placing a light-transmittable protective film on glass beads in a support sheet which consists of a binder layer and a reinforcing layer, and which is provided with retroreflective glass beads embedded in the binder layer, and thermoforming parts of the support sheet under heating and pressure so as to partially bond the binder layer of the support sheet to the protective film, which is characterized in that the reinforcing layer of the support sheet consists of a crosslinkable resin having shearing stress S in the range of 6×10^6 - 1.2×10^7 dyne/cm² before the thermoforming.

Items that consist of two or more of the listed Construction Materials, or a material that is not listed, that have been combined together through a manufacturing process, should be treated as manufactured products.

Traffic Signs (10-30-2023)

#1 Question: Do signs fall under build america or would they be considered manufactured as they include the aluminum backing and the reflective sheeting?

Answer: A manufactured item. By definition, items that consist of two or more of the listed Construction Materials, or a material that is not listed, that have been combined together through a manufacturing process, should be treated as manufactured products.

Traffic Striping Tape

#1 Question: What about traffic striping tape?

Answer: No. Right now, it would fall under a manufactured item which is currently under waiver, being it is made from two or more components or materials and combined to make the product.

Waterproofing Membrane - Bridge Decks

#1 Question: Is waterproofing membrane for bridges one of the items that needs to meet BABA?

Answer: No. If it was composed of any these materials:

Plastic and polymer-based products (including polyvinyl chloride, composite building materials, and polymers used in fiber optic cables) glass (including optic glass)

Then it would be a Construction Material and would need to meet BABA.

But it's combined with a sticky modified asphalt. Being combined with a material that is "exempt" from BABA in the manufacturing process makes it a Manufactured Product which is exempt from BABA under a current FHWA waiver.

Wood Products

#1 Question: Lumber is on the list of items that came out for the BA standards, does this include wooden poles? or just cut lumber?

Answer: Yes, it would include wooden poles. Lumber, by definition, includes any timber that is cut and prepared/processed for transport and sale.