

10/26/22

Supersedes Spec. Attn. dated 3/9/90, 12/5/90, 4/4/92, 2/22/93, 4/24/95 & 6/5/98, 06/02/10

SPECIAL ATTENTION

BUILD AMERICA, BUY AMERICA

On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) was signed into law (the Bipartisan Infrastructure Law, or BIL), which includes the Build America, Buy America Act (BABA). Pub. L. No. 117-58. BABA strengthens existing Buy America regulations and specifically states that no Federal funds made available for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials permanently incorporated into the project are produced in the United States. Any project within the scope of a finding, determination, or decision under the National Environmental Policy Act (NEPA), regardless of the funding source for the individual project, are subject to BABA regulations if at least one contract within the scope of the NEPA decision is funded Federally. This project is subject to BABA, and will require certification in the following item categories (an article, material, or supply should only be classified into one of the categories below):

- a) Iron and Steel: All iron and steel permanently incorporated into the project must be produced in the United States. The only exception to this requirement is the production of pig iron and the processing, pelletizing, and reduction of iron ore, which may occur in another country. This means all manufacturing processes, from the initial melting stage through the application of coatings, must occur in the United States.
 - Steel products include, but are not limited to, structural steel, piles, reinforcing steel, structural plate, steel culverts, guardrail, steel supports for signs, signals (mast arms), and luminaires.
 - Iron products include, but are not limited to, cast iron frames and grates.
- b) Manufactured Products*: All manufactured products permanently incorporated into the project must be produced in the United States. This means the manufactured product must be 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 must be greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

**The FHWA has a longstanding Buy America nationwide General Applicability Waiver for Manufactured Products. As of the date of this Special Attention, FHWA has not modified the waiver, and the waiver continues to apply to manufactured products that are not predominantly steel and iron. Manufactured products that are predominantly steel or iron remain subject to Buy America and now BABA certification.*
- c) Construction Materials: All construction materials permanently incorporated into the project must be manufactured in the United States. This means the final manufacturing process and the immediately preceding manufacturing stage for the construction material must occur in the United States.

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- Construction Materials include an article, material, or supply that is or consists primarily of:
 - i. Non-ferrous metals;
 - ii. Plastic and polymer-based products (including polyvinylchloride, composite build materials, and polymers used in fiber optic cables);
 - iii. Glass (including optic glass);
 - iv. Lumber; or
 - v. Drywall.
- Construction Materials do not include:
 - i. Items of primarily iron or steel;
 - ii. Manufactured Products;
 - iii. Cement and cementitious materials;
 - iv. Aggregates such as stone, sand, or gravel; or
 - v. Aggregate binding agents or additives.

Items that consist of two or more of the listed materials that have been combined through a manufacturing process, and items that include at least one of the listed materials combined through a manufacturing process with a material that is not listed, should be treated as manufactured products, rather than as construction materials. Equipment, tools, and temporary items are not required to meet the BABA requirements.

A Certificate of Compliance, conforming to the requirements of Section 106.04, shall be furnished for all above materials, regardless of item category. The form for this certification is entitled "Certificate of Compliance" and can be found at www.NHDOT.com.

For steel and iron materials and for manufactured products produced predominantly of steel or iron, records to be maintained by the Contractor for compliance with this Special Attention shall include a signed mill test report and a signed certification by each supplier, distributor, fabricator, and manufacturer that has handled the materials affirming that every process, including the application of a coating, performed on the steel or iron has been carried out in the United States of America, except as allowed by this Special Attention. The lack of these certifications will be justification for rejection of the material provided.

Manufacturer's certificate of compliance for construction materials must identify where the construction material was manufactured and attest specifically to compliance with BABA.

The requirements of said law and regulations 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%) of the total contract price or \$2,500.00, whichever is greater.

Upon completion of the project, the Contractor shall certify in writing as to compliance with BABA and also provide the total project delivered cost of all foreign steel and iron, provided under this requirement, that are permanently incorporated into the project. The form for this certification is entitled "Build America, Buy America Certificate of Compliance" and can be found at www.NHDOT.com.