

BUILD AMERICA
BUY AMERICA

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MATERIALS
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DIVISION

BUY AMERICA

23 U.S.C. 313(a):

Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.

BUILD AMERICA, BUY AMERICA

SEC. 70914 of the Bipartisan Infrastructure Law (BIL)

(a) IN GENERAL. – Not later than 180 days after the date of enactment of this Act, the head of each Federal agency shall ensure that none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

FHWA GENERAL WAIVER FOR MANUFACTURED PRODUCTS

- FHWA's general waiver for manufactured products remains in effect.
- FHWA must publish a notice in the Federal Register describing the justification and determination for this general applicability waiver and requesting public comment on the continued need for this waiver.
- <https://www.federalregister.gov/documents/2023/03/17/2023-05498/notice-and-request-for-comment-on-fhwas-review-of-its-general-applicability-waiver-of-buy-america#addresses>

FHWA'S EXISTING GENERAL APPLICABILITY WAIVERS

- Per OMB Memo M-22-11 of April 18, 2022, all existing, non-product specific general applicability waivers that were issued more than five years before passage of BIL must be reviewed via Federal Register by November 15, 2022.
- FHWA has four general applicability waivers:
 - Manufactured products
 - Raw materials
 - Ferryboat parts
 - Concrete poles for Guam

CONSTRUCTION MATERIALS

According to OMB Memorandum M-22-11, “Construction materials” includes an article, material, or supply that is or consists primarily of:

- Non-ferrous metals
- Plastic and polymer-based products
- Glass
- Lumber
- Drywall

CONSTRUCTION MATERIALS (CONT'D.)

Items EXCLUDED from construction materials under OMB Memo M22-11:

- An item of primarily iron or steel
- A manufactured product
- Cement and cementitious materials
- Aggregates such as stone, sand, or gravel
- Aggregate binding agents or additives

MANUFACTURED PRODUCTS

- A product that is comprised of a BABA listed construction material and another material.
- Manufactured products subject to BIL requirements must be manufactured in the United States and the cost of the components of the manufactured products mined, produced, or manufactured in the US is greater than 55% of the total cost of all components. See BIL 70912(6)(B).

WHAT'S NEXT

- Guidance from FHWA following review of comments on manufactured products.
- Guidance from OMB for final implementation guidelines.
- Enhancements to the Material Management System.
- Updates for material clearance requirements.
- Updates for the Qualified Product Lists.

REFERENCES

- FHWA Buy America Q&As: https://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm
- FHWA Buy America Construction Program Guide page: <https://www.fhwa.dot.gov/construction/cqit/buyam.cfm>
- IIJA (BIL): <https://www.fhwa.dot.gov/bipartisan-infrastructure-law/>
- OMB memo M-22-11: <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>

QUESTIONS?

THANK YOU!

