

Update: A Final rule by the Federal Highway Administration (FHWA) terminates the general applicability waiver on manufactured products.

The rule amends FHWA's Buy America regulation to terminate FHWA's general waiver for manufactured products and establish Buy America requirements for manufactured products with respect to Federal-aid highway projects.

Key timelines:

October 1, 2025: For Federal-aid projects that have E76 authorization for construction on or after October 1, 2025, all manufactured products permanently incorporated into the project must be assembled in the United States.

October 1, 2026: For Federal-aid projects that have E76 authorization for construction on or after October 1, 2026, all manufactured products permanently incorporated into the project must both be manufactured in the United States and have the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States be greater than 55 percent of the total cost of all components of the manufactured product.

Link to the final rule.

<https://www.federalregister.gov/documents/2025/01/14/2024-31350/buy-america-requirements-for-manufactured-products>

An Office Bulletin will be forthcoming to highlight the policy changes and to provide guidance for implementation. As part of the Office Bulletin, Exhibit 12-G: Required Federal-aid Contract Language will be updated to incorporate the new requirements.

DEFINITIONS/BACKGROUND

For the purposes of applying Buy America requirements, the following definitions and background apply:

Buy America – Buy America refers to the federal laws codified in Section 313 of Title 23 in the United States Code ([23 USC 313](#)), “Buy America”; [49 USC Subsection 5323\(j\)](#), “Buy America”; and related regulations in [23 Code of Federal Regulations \(CFR\) 635.410](#), “Buy America Requirements,” which are applicable to steel and iron products and their coatings that are permanently incorporated into the project as well as new requirements of manufactured products and excluded materials.

Build America Buy America (BABA) Act – BABA Act means [2 CFR Part 184](#) as established in the Infrastructure Investment and Jobs Act. This modified 23 CFR 635.410 with a new definition of predominantly iron and steel as well as added new requirements for manufactured products and defined excluded materials. This also codified specific requirements in 2 CFR 184 for construction materials, manufactured products and excluded materials for infrastructure projects.

Iron or steel products means 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.

Excluded materials means BABA act materials as defined in 2 CFR 184.3, which includes cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

Construction Materials – are articles, materials, or supplies made of just one of the items listed below.

1. Non-ferrous Metals (like brass, bronze, aluminum, copper etc.)
2. Plastic and Polymer-based Products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
3. Glass (including specialty glass like optic glass)
4. Fiber Optic Cable (including drop cable)
5. Optical Fiber
6. Lumber
7. Engineered Wood
8. Drywall

Note that minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

Manufactured Products are articles, materials, supplies that have been

- Processed into a specific form and shape; or
- Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

Note that an item is not a manufactured product if it falls into any other category (i.e. iron or steel product, construction material, cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives).

Waiver of Buy America Requirements for De Minimis Costs and Small Grants

The FHWA has issued a waiver of Buy America requirements for construction materials and manufactured products, under a single financial assistance award, when:

- The total value of the non-compliant products does not exceed the lesser of \$1,000,000 or 5% of total applicable project costs (De Minimis Costs); or
- The total amount of Federal financial assistance applied to the project, through awards or subawards, is below \$500,000.

If you have any questions, please email: girmay.beyene@dot.ca.gov