

Matrix Background:

1. The Build America, Buy America Act (BABA), enacted as part of the Bipartisan Infrastructure Law (BIL), requires that iron, steel, manufactured products, and construction materials used in infrastructure projects funded by federal financial assistance be produced in the United States.
2. Federal Office of Management and Budget (OMB) has provided BABA implementation guidance in memorandum M-24-02 entitled "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure" and in 2 CFR 184 and 2 CFR 200.
3. All entities that receive federal financial assistance on infrastructure projects are required to comply with the requirements of BABA as of November 14, 2022. DeIDOT previously issued implementation guidance ahead of the November 14th date.
4. The guidance within this matrix and associated material database has been updated based on OMB's updated guidance. The updated guidance goes into effect October 23, 2023.
5. In accordance with 2 CFR 184.4(e), "The classification of an article, a material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated. "
6. In accordance with 2 CFR 184.4(e), "An article, material or supply should only be classified into one of the following categories: (1) iron or steel; (2) a manufactured product; (3) a construction material; or (4) section 70917(c) materials."
7. Citations are provided to all information incorporated from outside sources and italicized. Information not cited or italicized has been originated by DeIDOT as guidance.
8. DeIDOT has used this matrix to create a DeIDOT pay item database which estimates a material's BABA categorization and its associated BABA requirements based on the most common construction methods and material sourcing.

BABA Category	BABA Category Description	BABA Manufacturing Requirement	Additional Guidance
Non-Permanent Material - Exempt	"[BABA] does not apply to tools, equipment, and supplies, such as temporary scaffolding brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project." [M-24-02]	Exempt.	Only materials that are permanently incorporated in the work are subject to BABA requirements. Materials not permanently incorporated in the completed infrastructure project are exempt from BABA requirements. This includes all temporary formwork, temporary erosion and sediment controls, temporary traffic control devices etc....
Iron or Steel	"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." [2 CFR 184.3]	"All manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States." [2 CFR 184.3]	In accordance with 23 CFR 635.410, all iron and steel materials permanently incorporated into a project that uses Federal-Aid Highway funds, must be produced in the United States and all manufacturing processes involving these materials must occur in the U.S., except that a minimal amount of foreign steel or iron materials may be used, provided the cost of the foreign materials does not exceed 0.1 percent of the total contract cost or \$2,500.00, whichever is greater.
Construction Material	"Articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2). To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material. 1. The listed items are: i. Non-ferrous metals; ii. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); iii. Glass (including optic glass); iv. Fiber optic cable (including drop cable); v. Optical fiber; vi. Lumber; vii. Engineered wood; and viii. Drywall. 2. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material." [2 CFR 184.3]	"All manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6 for more information on the meaning of 'all manufacturing processes'." [2 CFR 184.3]	What Materials Qualify as a Construction Materials - The preamble to 88 FR 57750 states that "OMB finds that including additional items to the list of Construction Materials - such as coatings, paint, or bricks is not warranted at this time." Therefore, the list provided in the category description is considered a complete listing and no materials should be added accordingly. How Section 70917(c) Materials used in Construction Materials are to be Accounted for - The preamble to 88 FR 57750 states that "the statute clearly excludes the section 70917(c) materials from categorization as construction materials and as components or inputs in the associated standards for these materials." Therefore, 70917(c) and their domestic origin should not be considered in assessing the Construction Material's Buy America preference compliance.
Manufactured Product	"1. Articles, materials, or supplies that have been: i. processed into a specific form and shape; ii. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, material, or supplies. 2. If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR 184.4(e) and the definition set forth in this section, then it is not a manufactured product. However, an article, material or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials." [2 CFR 184.3]	"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, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions: a. For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free certificate is issued); or b. For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product." [2 CFR 184.3 and 2 CFR 184.5]	How to Determine the Cost of Components for a Manufactured Product - OMB provides a simplified four-step method in a Key Provisions memo released with the final guidance contained in 2 CFR 184 and 2 CFR 200 which states the following: <i>In general, there are 4 steps in this determination:</i> 1. Determine the components manufactured in the United States. 2. Determine the cost of those components manufactured in the United States. 3. Determine the cost of all components. 4. Divide the cost determined in step 2 by the cost determined in step 3. If the fraction is more than 55 percent, the manufactured product complies with Buy America requirements as long as the manufactured product is, itself, manufactured in the United States. How 70917(c) Materials Used in Manufactured Products are to be Accounted for - The preamble to 88 FR 57750 states that "70917(c) materials, on their own, are not manufactured products. Further, section 70917(c) materials should not be considered manufactured products when they are used at or combined proximate to the work site - such as is the case with wet concrete or hot mix asphalt brought to the work site for incorporation." Additionally, the preamble to 88 FR 57750 states that "certain section 70917(c) materials (such as stone, sand, and gravel) may be used to produce a manufactured product, such as precast concrete. Precast concrete is made of components, is processed into a specific shape or form, and is in such state when brought to the work site." The preamble to 88 FR 57750 goes on to state that "including the value of section 70917(c) materials in the 55 percent cost of components is consistent with BABA, which requires a Buy America preference to be applied to all manufactured products." Therefore, it is the Department's stance that 70917(c) must be accounted for when determining whether 55 percent of the total cost of all components has been manufactured in the United States. How to Apply the FHWA's Current Buy America Final Rule (48 FR 53099) (i.e. Manufactured Products waiver) - The Bi-Partisan Infrastructure Law (BIL) requires that federal agencies review existing, non-product specific general applicability waivers that were issued more than five years ago. Until this review is complete and the waivers are formally rescinded or updated through the rule-making process, the existing waivers are valid and should be considered with the implementation of BABA. Therefore, the Department will continue to apply FHWA's 1983 Buy America Final Rule (48 FR 53099) for manufactured products. Additional Considerations for Steel or Iron used in a Manufactured Products - In accordance with 23 CFR 635.410, all iron and steel materials permanently incorporated into a project that uses Federal-Aid Highway funds, must be produced in the United States and all manufacturing processes involving these materials must occur in the U.S., except that a minimal amount of foreign steel or iron materials may be used, provided the cost of the foreign materials does not exceed 0.1 percent of the total contract cost or \$2,500.00, whichever is greater. Kit Concept - The preamble to 88 FR 57750 recognizes "that some items may be acquired from a manufacturer or supplier as a kit intended for final assembly at the work site." OMB further clarifies in the preamble to 88 FR 57750 that "a kit may be treated and evaluated as a single manufactured product regardless of when or how its individual components are brought to the work site". Therefore, the "kit" should be evaluated as a whole and not by the parts.
Section 70917 (c) materials	"Cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives." [2 CFR 184.3]	"The statute clearly excludes the Section 70917(c) materials from categorization as construction materials and as components or inputs in the associated standards for these materials." [Preamble 88 FR 57750]	See discussion under "Manufactured Products" and "Construction Materials" BABA Categories for how to apply section 70917 (c) materials that are used in the production of Construction Materials and Manufactured Products.
Non-BABA Material	This material is not defined by BABA, OMB M-24-02, or 2 CFR 184 and 200.	BABA statute only applies to "iron, steel, manufactured products, and construction materials used in infrastructure projects"; therefore, materials that cannot be categorized as such, have no Buy America preference under BABA.	2 CFR 184.4(e) and the preamble to 88 FR 57750 acknowledge that not all materials will fall into the category of (1) iron or steel; (2) a manufactured product; (3) a construction material; or (4) section 70917(c) materials. "An article, material or supply should only be classified into one of the following categories: (1) iron or steel; (2) a manufactured product; (3) a construction material; or (4) section 70917(c) materials.... In some cases, an article, material, or supply may not fall under any of the above-listed categories". [2 CFR 184.4(e)]