Matrix Background:

1. All entities that receive federal financial assistance through US DOT on infrastructure projects were required to comply with the requirements of the Build America, Buy America Act BABA as of November 14, 2022.
2. The federal Office of Management and Budget (OMB) provides additional BABA implementation guidance in memorandum M-24-02 entitled "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure".
3. BABA Section 70917(a) states that the Buy America requirements under Section 70914 apply only to the extent that federal agencies do not already apply a Buy America preference as described in Section 70914 to steel, iron, manufactured products, and construction materials.
4. 23 U.S.C 313 requires that all Federal-aid Highway Program projects use only steel, iron, and manufactured products produced in the United States.
5. The FHWA's Buy America requirements for manufactured products was waived in 1983 under the Manufactured Products General Waiver (see 48 FR 1946 and 48 FR 53099). FHWA rescinded the Manufactured Products General Waiver under 90 FR 2932 issued in January of 2025.
6. The regulations implementing BABA are contained in 2 CFR Part 184. The regulations implementing FHWA's Buy America requirements are contained in 23 CFR 635.410.
7. In accordance with 2 CFR 184.4(e) and 23 CFR 635.410(c)(2), "*The classification of an article, a material, or supply as falling into one of the categories [listed in this matrix] 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 [material] will be incorporated.* "
8. 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.* "
9. Language included directly from outside sources is italicized and cited. Information not cited or italicized has been originated by DelDOT.
10. DelDOT has used this matrix to develop a DelDOT pay item database that identifies a material's anticipated material categorization and its associated domestic preference requirements based on the most common construction methods and material sourcing practices.

Material Category	Implementing Regulations	Category Description	Manufacturing Requirement	Additional Guidance
Non-Permanent Material	N/A	"*[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. Similarly, FHWA's Buy America requirements only pertain to iron or steel products and manufactured products that are permanently incorporated in the infrastructure project in accordance with 23 CFR 635.410(b)(1)(i) and 23 CFR 635.410(c). Non-permanent material includes, but is not limited to, temporary formwork, temporary erosion and sediment controls, and temporary traffic control devices.
Iron or Steel	23 CFR 635.410	*"Iron or steel products means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both."* [23 CFR 635.410(c)(1)(iii)] *"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."* [23 CFR 635.410(c)(1)(vi)]	*"If iron or steel products are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied."* [23 CFR 635.410(b)(1)(ii)]	In accordance with 23 CFR 635.410, all iron and steel materials permanently incorporated into a project that uses Federal-aid Highway Program 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	2 CFR Part 184	"*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]	"In the case of construction materials, *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' for specific construction materials.* " [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 additional materials should be added to this category. **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 domestic preference compliance.
Manufactured Product	23 CFR 635.410	*"Articles, materials, or 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. If an item is classified as an iron or steel product, an excluded material, or other product category as specified by law or in 2 CFR part 184, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product may include components that are iron or steel products, excluded materials, or other product categories as specified by law or in 2 CFR part 184. Mixtures of excluded materials delivered to a work site without final form for incorporation into a project are not a manufactured product."* [23 CFR 635.410(c)(1)(iv)] *"If, however, an article, material, or supply meets this definition but could also be classified as an iron or steel product, excluded material, or other product category as specified by law or in 2 CFR 184, that article, material, or supply is not a manufactured product"* [90 FR 2932]	*"Component means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into a manufactured product or, where applicable, an iron or steel product." [23 CFR 635.410(c)(1)(i)]* *"Manufacturer, in the case of manufactured products, means the entity that performs the final manufacturing process that produces a manufactured product." [23 CFR 635.410(c)(1)(v)]* *"Produced in the United States, in the case of manufactured products, means: [23 CFR 635.410(c)(1)(vii)]* *A). For projects obligated on or after October 1, 2025, the product was manufactured in the United States; and [23 CFR 635.410(c)(1)(vii)(A)]* *B). For projects obligated on or after October 1, 2026, the product was 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 is greater than 55 percent of the total cost of all components of the manufactured product."* [23 CFR 635.410(c)(1)(vii)(B)] "*In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, recipients shall determine the cost as follows:* " [23 CFR 635.410(c)(3)] *"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 entry certificate is issued)"* [23 CFR 635.410(c)(3)(i)] "*For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (c)(3)(i) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product."* [23 CFR 635.410(c)(3)(ii)]	**Precast concrete products -** For precast concrete products classified as manufactured products, all iron or steel components must be domestically manufactured pursuant to 23 CFR 635.410(c)(2)(i), and their cost will count toward the 55 percent domestic content requirement for the overall product. **Intelligent transportation systems and other electronic hardware systems** - For intelligent transportation systems and other electronic hardware systems classified as manufactured products, all iron or steel used for cabinets or enclosures must be domestically manufactured in accordance with 23 CFR 635.410(c)(2)(ii), and their cost will count toward the 55 percent domestic content requirement for the overall system. **How 70917(c) materials used in manufactured products are to be accounted for** - 90 FR 2932 states that "*for manufactured products containing excluded materials as components, the excluded material must be considered in determining whether the manufactured product has more than 55 percent of its components, by cost, produced in the United States.* " This is consistent with 88 FR 57750 which states 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, 70917(c) materials are to be accounted for when determining whether 55 percent of the total cost of all components has been manufactured in the United States. **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* ". FHWA concurred with OMB's assessment in 90 FR 2932. Therefore, the "kit" should evaluated as a whole and not by the parts. **FHWA guidance on determining whether an article, material, or supply is a manufactured product** - 90 FR 2932 states that *"The definition of 'manufactured product' has two steps. First, to be a manufactured product, the material must either (1) be processed into a specific form and shape; or (2) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. Like OMB, FHWA finds it necessary to have a positive definition for what constitutes a 'manufactured product.' For example, FHWA would not classify a raw material as a manufactured product because it is not manufactured under FHWA's meaning of the term. Raw materials are not (1) processed into a specific form and shape; or (2) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies." 90 FR 2932 also states that "If a material meets the definition of a manufactured product under the first step and is not excluded under the second step, it is properly classified as a manufactured product, unless it is a mixture of excluded materials delivered to a work site without final form for incorporation into a project."*
Section 70917 (c) Materials	2 CFR 184	"*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" categories for how to apply section 70917(c) material inputs to those material categories. **Mixtures of excluded materials** -23 CFR 635.410(c)(1)(iv) states that "*Mixtures of excluded materials delivered to a work site without final form for incorporation into a project are not a manufactured product.* " Similarly, 88 FR 57750 states that "*In the case of section 70917(c) materials, OMB clarifies in this preamble that, to the extent the section 70917(c) materials were only combined as an unsettled mixture without final form when reaching the work site, such as in the case of wet concrete or hot mix asphalt, the unsettled mixture should not be considered a manufactured product to which a Buy America preference applies.* "
Non-BABA Material	N/A	"*In some cases, an article, material, or supply may not fall under any of the categories listed in paragraph (e)(1) of this section.* " [2 CFR 184.4(e)(2)]	None	BABA statute only applies to "iron, steel, manufactured products, and construction materials used in infrastructure projects." FHWA's requirements only apply to "iron, steel, and manufactured products". Therefore, materials that cannot be categorized as iron, steel, manufactured products, or construction materials, have no domestic material preference requirement under BABA or 23 U.S.C. 313. **Example non-BABA materials** - 88 FR 57750 states that "*OMB does not believe that Congress intended to apply the Buy America preference for manufactured products to non-manufactured or raw materials if they are brought to the work site in an unprocessed or minimally-processed state (such as topsoil, compost, and seed).* " 88 FR 57750 additionally states that "*non-manufactured or raw materials mixed off-site with other non-manufactured or raw materials of similar types, or with similar but not identical properties, would not necessarily result in classifying the mixed material brought to the work site as a manufactured product if it remains in an unprocessed or minimally processed state. OMB recognizes that an overly strict application of the revised definition of "manufactured products" could potentially result in classifying certain technically composite or compound raw materials, such as fill dirt, as manufactured products, which is not OMB's intent.* "