Build America Buy America in 2023

Michael Dennee, Contract Services Group Coordinator



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What has changed

- Build America Buy America requires that <u>all</u> iron, steel, manufactured products, and construction materials used in construction projects are produced in the US
- Since FHWA already has a long standing Buy America program, the requirements for steel are still the same as they have always been
- There is also an interpretation of manufactured products that was made with the original Buy America. Based on this interpretation there are no additional requirements for manufactured products

 Oregon Department of Transportation

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What has changed

- Implementation of the new Build America Buy America requirements will be focused on the use of Construction Materials on projects
 - Non-ferrous metals
 - Plastic and polymer based products
 - Glass
 - Lumber
 - Drywall



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What has changed

- Specific items that Build America Buy America does not apply
 - Temporary items
 - Asphalt products
 - Cement and cementitious products
 - Aggregates
 - Aggregate additives



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Implementation

- Projects with Construction Authorization after November 10, 2022 must meet the Build America Buy America requirements
- At ODOT this means that it applies to any federal aid project that has a bid opening after January 1, 2023.



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Implementation

- All projects with Construction Authorization prior to November 10, 2022 will not be required to meet the new requirements
- Projects that require additional increases in federal authorization will not be required to meet the new requirements if the original construction authorization was prior to November 10, 2022
- You can identify projects that have the Build America Buy America requirements in them by looking at the contract special provisions in 00160.20(d) and 00165.35(e)



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00160.20(d) Build America Buy America Act Requirements - If federal highway funds are involved on the Project, the Contractor shall comply with the Build America Buy America Act and implementing regulations (Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. No. 117-58, which includes the Build America, Buy America Act ("the Act"). Pub. L. No. 117-58, Sections 70901-70941).

All of the manufacturing processes must occur in the United States for the applicable construction materials permanently incorporated in the Project as listed below.

Construction materials include an article, Material, or supply that is or consists primarily of:

- · non-ferrous metals:
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- · glass;
- · lumber: or
- drywall.

Add the following subsection:

00165.35(e) Certificate of Origin of Construction Materials - When a certificate of material origin for construction materials is specified, complete ODOT Form 734-5378 as required by 00160.20(d) for Federal-aid projects.



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Implementation

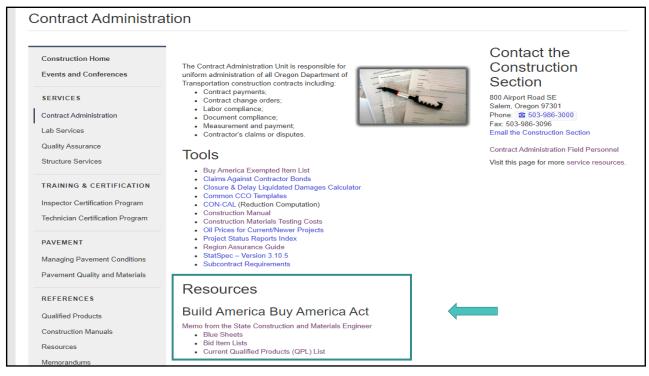
- Build America Buy America does not allow for any de minimis amount of foreign construction material incorporated in projects
- The allowances for foreign iron or steel from Buy America still remains the same
- Because of these differences there will be two forms that are required (depending on the type of material)
 - Form 734-2126 Certificate of Materials Origin
 - Form 734-5378 Construction Materials CMO



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- New language is ready to be posted as part of the Construction Manual (Chapter 12B starting on page 11)
- This will be your best reference for implementation of the Build America Buy America requirements
- Anything that we need to change as this is being implemented will be modified in the Construction Manual so that RE Offices have information to enforce the requirements
- Please contact us if the guidance in the Construction Manual does not follow the guidance that you have heard – so that we can clarify and make adjustments to the Construction Manual as necessary

Build America Buy America

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA), which includes the BABA Act (Pub. L. No. 117 SB, Sections 70901 70941). While existing Buy America requirements previously applied to iron, steel, and certain manufactured products. BABA expands requirements to include all manufactured products and construction materials in construction contracts that include Federal funding.

The Act requires that no later than May 14, 2022—180 days after the enactment of the IIIA—the head of each covered 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." A 180-day transitional waiver was approved for US-DOT to extend the implementation of BABA to November 10, 2022.

Included in BABA

- Construction materials include non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and thought
- BABA does not apply to temporary items, asphalt products, cement and cementitious products, aggregates, or aggregate additives. The BABA preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it 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.
- Manufactured products are defined as products consisting of at least two construction materials or other constituents that are produced or assembled off the Project Site. The existing 1983 FHWA waiver for manufactured products is being reviewed at the national level, as required by BABA. For now, manufactured products fall under the 1983 FHWA waiver.

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Pay Item List

- Complete list of all pay items
- Organized by Specification #
- 45 Pages of pay item information
 - Identifies how each pay item is addressed

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Bid Ite	ms List							
Sort		Iron and Steel						
0=exempt/NA	Exempt,	(includes	BABA	BABA				
1=Iron/Steel	Temporary, or Not	manufactured	Construction	Manufactured				
2=Construction	Applicable		Material	Product				
3=Manufacture 🔻	₩.	steel items	¥	v	Item Number	Item Description		
1		560			0560-0105000A	STEEL BOX GIRDER		
1					0560-0106000A	TRAPEZOIDAL STEEL BOX GIRDER WITH HAUNCH		
1					0560-0107000A	HORIZONTAL CURVED STEEL BOX GIRDER		
1					0560-0108000A	STEEL ROLLED BEAM		
0	0560-0109000A				0560-0109000A	STRUCTURAL STEEL MAINTENANCE		
1		564			0564-0100000A	FALL ARREST SYSTEM		
3				565	0565-0100000A	CFRP STRENGTHENING - WET LAYUP SYSTEM		
3				566	0566-0100000A	CFRP STRENGTHENING - NEAR SURFACE MOUNTED		
2						TITANIUM SYSTEM, 0.375 INCH DIAMETER		
2			567		0567-0102000A	TITANIUM SYSTEM, 0.500 INCH DIAMETER		
2			307		0567-0103000A	TITANIUM SYSTEM, 0.625 INCH DIAMETER		
2					0567-0104000A	TITANIUM SYSTEM, 0.750 INCH DIAMETER		
2			0570-0100000K		0570-0100000K	TIMBER AND LUMBER		
3				0570-0112000K	0570-0112000K	GLUED LAMINATED TIMBER		
1		581			0581-0100000E	BRIDGE DRAINS		
1		582			0582-0010000E	BEARING DEVICES,		
1		362			0582-0020000E	BEARING DEVICES, INCH WIDE, INCH LONG, INCH THICK		
2					0583-0201000F	PVC CONDUIT SYSTEM,INCH DIAMETER		
2			583		0583-0202000F	GRC CONDUIT SYSTEM,INCH DIAMETER		
2			363		0583-0203000F	316 SS RMC CONDUIT SYSTEM,INCH DIAMETER		
2						RTRC CONDUIT SYSTEM,INCH DIAMETER		
3					0584-0100000F	ELASTOMERIC CONCRETE NOSING		
3				584	0584-0101000K	ELASTOMERIC CONCRETE NOSING MATERIAL FOR REPAIR		
3					0584-0102000F	REPAIR ELASTOMERIC CONCRETE NOSING		
0	0585-0200100A				0585-0200100A	ASPHALTIC PLUG JOINT SEALS		
0	0585-0201100K				0585-0201100K	ASPHALTIC PLUG JOINT SEAL MATERIAL		
0	0585-0206100A				0585-0206100A	POURED JOINT SEAL		

Blue Sheet Materials

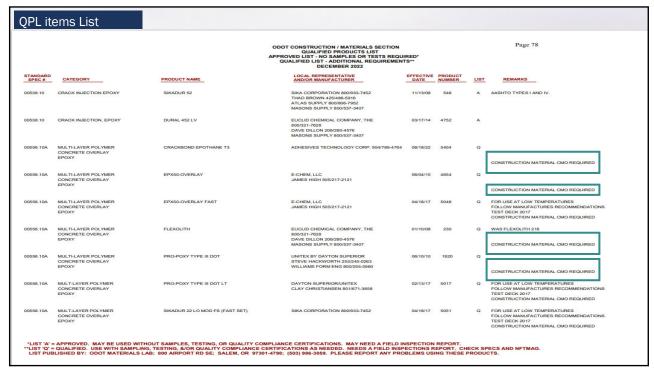
- Represents all materials covered by the Blue Sheets for traffic signals
- Organized by equipment categories
 - 2 pages of information
- Identifies how each signal material is addressed

lue Sheets	list					
xempt or Not Applicable	Iron and Steel (includes manufactured steel items)?	BABA Construction Material?	BABA Manufactured Product?	Category	Item	
				Poles and Pede	stals	
	×				Chase Nipple	
	×				Pipe Plugs	
		X			Pedestal	
				Conduit & Appurtenances		
		×			Conduit	
		×			Conduit Bushings, PVC	
	×				Conduit Bushings, Metal	
		×			Conduit Plug	
	x				Condulet	
			x		Conduit Hub	
			X		Expansion Fitting	
		x			Pull Line	
		×			Underground Warning Tape	
				Junction Box		
			x		Junction Boxes	
				Cables, Wires, C	Grounding/Bonding & Appurtenances	
		×			Bond Wire	
			x		Ground Rod & Clamp	
			X		Control Cable	
			x		Industrial Ethernet Cable	
			x		Interconnect Cable	
			x		TFFN, THWN & XHHW wire	
			×		Strain Relief	

QPL

 Identifies in the "Remarks" column which QPL items will require a CMO for either steel or construction materials

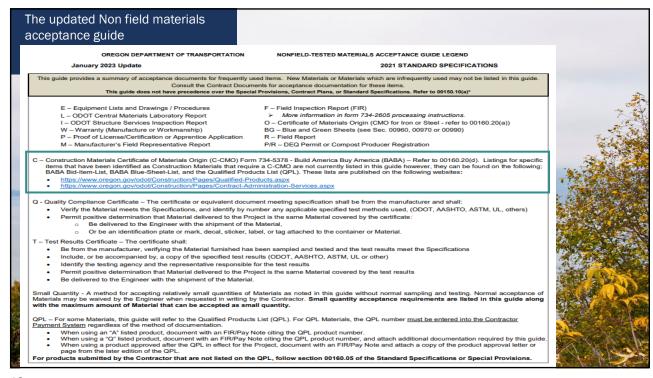
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Non Field Tested Materials Guide

- At this time the NTMAG refers to the spreadsheet of Pay Items
 - The NTMAG will be updated to specifically show which items require the CMO form for Construction Materials

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Resources:

IIJA: https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf

BABA: IIJA Division G, Title IX, Sections 70901-70941

Office of Management and Budget Memo MB-22-11: https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf

Contact Information:

General Information & Certificate of Material Origin (CMO) Forms:

Mike Dennee

Michael.J.Dennee@odot.oregon.gov

503-580-2013

Specifications:

Dan Anderson

<u>Daniel.A.Anderson@odot.oregon.gov</u> or <u>ODOTSpecifications@odot.oregon.gov</u>

503-986-3777

Qualified Products List (QPL)

Dean Chess

Dean.M.Chess@odot.oregon.gov

503-986-3059

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