

BUILD AMERICA BUY AMERICA

OVERVIEW OF LAWS

Buy American Act (1933)

Requires *federal* procurement preferences for U.S.-made goods.

41 USC 8301-8305

Buy America Act (1982)

Requires domestic steel, iron and manufactured products on *federally-funded transportation projects*.

23 USC 313, 23 CFR 635.410

Domestic Preferences for Procurements (2020)

Requires domestic preference for procurements with federal funding.

2 CFR 200.322

Build America Buy America Act (2021)

Expands domestic materials requirements on *federally assisted infrastructure projects* for iron and steel, manufactured products, and *construction materials*.

Pub. L. 117-58 (Part of IIJA/BIL), 2 CFR 184



APPLICABILITY BASED ON OBLIGATION DATE

Before May 14, 2022: Buy America iron and steel requirements in effect

May 14, 2022: BABA statutory requirements become effective.

- All iron, steel, manufactured products and construction materials must be produced in the U.S. unless a statutory waiver applies.
- FHWA Buy America for predominantly iron and steel materials still applies.
- FHWA manufactured products general waiver still applies.
- USDOT issued a temporary transitional waiver of construction material requirements.

August 16, 2023: USDOT Waiver of Buy America Requirements for De Minimis Costs and Small Grants

October 23, 2023: OMB rule 2 CFR 184 becomes effective, includes waiver processes.

March 20, 2025: FHWA ends Manufactured Products General Waiver.

October 1, 2025: Final assembly of all manufactured products in the U.S.

October 1, 2026: 55% component requirements takes effect.

APPLIES TO WHICH PROJECTS & CONTRACTS

FHWA Buy America: Permanently incorporated iron and steel and manufactured products

All federal-aid projects financed under Title 23

- Highway construction, non-highway construction, and service contracts
- Contracts not generally considered infrastructures projects like the purchase of vehicles, equipment, bicycles, trailers, etc.
- Utility agreements eligible for federal assistance
- Railroad agreements eligible for federal assistance

BABA Act – Adds domestic preference for construction materials on federally assisted infrastructure projects.



APPLICABILITY QUESTION



On a federal-aid project, can you locally fund an agency-furnished materials contract to avoid Buy America requirements?

a) Yes

b) No

Answer:
b) No

ODOT MATERIALS & INSPECTION

23 USC § 313 BUY AMERICA



§313. Buy America

(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.

(b) The provisions of subsection (a) of this section shall not apply where the Secretary finds—

(1) that their application would be inconsistent with the public interest;

(2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

(h) APPLICATION TO HIGHWAY PROGRAMS.—The requirements under this section shall apply to all contracts eligible for assistance under this chapter for a project carried out within the scope of the applicable finding, determination, or decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), regardless of the funding source of such contracts, if at least 1 contract for the project is funded with amounts made available to carry out this title.

CURRENT USDOT GENERAL WAIVER

USDOT Waiver of Buy America Requirements for De Minimis Costs and Small Grants – federal obligation on or after August 16, 2023

- De Minimis Costs (construction materials/manufactured products)
- Small Grants (federal assistance under $500,000)



FHWA PROJECT SPECIFIC WAIVERS



- **Can the agency design around it?**
- If the agency absolutely cannot design around it, a Buy America waiver request may be submitted to FHWA.
- This should be as EARLY in project design as possible.
- Market research, cost analysis, supporting documents will be needed to show:
  - ✓ A waiver is in the public interest;
  - ✓ There is insufficient domestic availability of the product(s); or
  - ✓ The domestic product(s) will increase the overall project costs by more than 25%.
- Recipient submits to FHWA Oregon Division for initial review. Division submits to FHWA Office of Infrastructure for formal review and coordination with Made in America Office for final decision.
- Public notice and comment period required.
- Approval is not guaranteed.

SPECIFICATIONS

- **00160.20(a) Buy America** → Domestic iron and steel materials required if permanently incorporated into the Project.
  - De minimis exception: Foreign- and unknown-origin iron and steel not exceeding the greater of one-tenth of one percent (0.1%) of the Contract Amount or $2,500. Cost valued on the date the iron or steel products are delivered to the Project site.
  - Remove and replace noncompliant iron and steel materials.
  - Certificate of Materials Origin required before incorporating materials into the project (also see 00165.35(d))
  - Contractor to include provision in all subcontracts.
- Waiver: Federal assistance less than $500,000, effective August 16, 2023.
- Updates to (a) over the last few years. See Certified LPA's General Conditions & Project Special Provisions.



SPECIFICATIONS CONTINUED

- **00160.20(d) Build America Buy America Act Requirements** → Construction materials and manufactured products permanently incorporated
  - Construction materials – Updated definition in November 2023.
  - Manufactured products - Final assembly in U.S. effective October 1, 2025; 55% of all component parts effective October 1, 2026.
  - De Minimis exception: Total value of non-compliant products is lesser of $1 million or 5% of total applicable costs, effective August 16, 2023.
  - Remove and replace non-compliant Materials.
  - Certificate of Materials Origin required before incorporating materials into the project (also see 00165.35(d) or (e))
  - Contractor to include provision in all subcontracts.
- Waiver: Federal assistance less than $500,000, effective August 16, 2023.
- Several changes to (d) over the last few years. Important to review both Certified LPA's General Conditions & Project Special Provisions.



BUY AMERICA & BABA ON LETTERS OF PUBLIC INTEREST FINDING (LPIFs)

Buy America/Build America Buy America: *How will conformance to Buy America requirements for any iron or steel materials and Build America Buy America requirements for construction materials that are non-ferrous metals, plastic and polymer-based products, glass, lumber or drywall be confirmed (applies to federally funded projects only)? If Buy America or Build America buy America requirements do not apply, please describe why.*

Agency-Furnished Materials – Explain in space provided, as applicable:

- Buy America and BABA do not apply to the materials and *why not*.
- Domestic source(s) are available, and certificate(s) of material origin will be obtained.
- Domestic source(s) are unavailable, and Agency will specify a portion of the de minimis will be used by the Agency.

Use of Agency Forces – Explain if the work is for "labor only". For example, the work is connection or testing work performed by agency or utility forces that does not involve permanent installation of materials.



AGENCY-FURNISHED MATERIALS SPECIAL PROVISIONS NEEDED

00160.30 Agency-Furnished Material

Add provision that identifies the Agency-furnished materials.

00160.20(a) Buy America Act

Add provisions that specify the cost $____ of Agency-furnished iron and steel, and the de minimis allowance to the Contractor is *reduced* by that amount.

00160.20(d) Build America Buy America Act Requirements

Add provisions that specify the cost $____ of Agency-furnished construction materials and manufactured products, and the de minimis allowance to the Contractor is *reduced* by that amount.

Contact ODOTCertification@odot.oregon.gov –

For the unique Special Provisions for use on Certified LPA projects.



TIPS FOR PROGRAM & DESIGN TEAMS

- Federal financial assistance threshold → If under or near $500K, consider the Buy America/BABA implications for going over.
- Market research and early product-level cost analysis may be needed
  - Consider how Buy America and BABA covered materials may impact project scope, design, bid, and contract schedules.
  - Consider whether design may be used to minimize the need for covered Buy America and BABA materials that are not currently domestically available.
- Be familiar with YOUR agency's approved General Conditions and Special Provisions for 00160.20 and 00165.35
- For projects with agency-furnished materials be aware of the need to ensure Buy America and BABA compliance.



Questions?



ODOT MATERIALS & INSPECTION



(BABA) IN 2026

Michael Dennee, Contract Services Group Coordinator

REQUIREMENTS FOR MANUFACTURED PRODUCTS

- Before March 20, 2025, manufactured products were waived from FHWA's Build America Buy America requirements for Construction Materials identified as Manufactured Products.
- The new rule aims to maximize the use of domestically produced Manufactured Products permanently incorporated in federal-aid highway and bridge projects.
- While Manufactured Products were previously exempt from meeting the requirements of BABA, they will have to meet the Build America Buy America Act Requirements in 00160.20(d).



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DEFINITION OF MANUFACTURED PRODUCTS

"Manufactured Products" means articles, materials, or supplies which 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.

Common examples:

Pavement Markings, Delineators, Epoxy Resin, etc.



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SPECIAL CIRCUMSTANCES

- **EV:** Presently, EV chargers covered by the EV Charger Waiver should either have already begun installation or be compliant with both the final assembly and 55 percent requirements.
- **Precast:** Precast concrete products that are classified as manufactured products must have their predominantly iron or steel components meet FHWA's Buy America requirements for iron and steel. Similarly, pursuant to § 635.410(c)(2)(ii),
- **ITS:** The cabinets or other enclosures of intelligent transportation systems (ITS) and other electronic hardware systems that are installed in the highway right of way or other real property and classified as manufactured products must comply with FHWA's Buy America requirements for iron and steel if the cabinet or enclosure is predominantly iron or steel. These specified manufactured products must also comply with FHWA's Buy America requirements for manufactured products.
- **Ferry:** FHWA has granted two nationwide waivers, 1) on February 9, 1994, for ferryboat equipment and machinery parts. Federal Register, Volume 59 Issue 27



MANUFACTURED PRODUCTS IMPLEMENTATION

The rule will be rolled out in **two phases**.

- **Phase 1:** (FHWA Funding Obligated after October 1, 2025) Final assembly of all manufactured products shall occur in the U.S.
- **Phase 2:** (FHWA Funding Obligated after October 1, 2026) Final assembly of all manufactured products shall occur in the U.S. **AND** The cost of components of products mined, produced, or manufactured in the US. must be greater than 55 percent of the total cost of all components in the manufactured product.

NEW CERTIFICATE OF MATERIALS ORIGIN FORM (734-5486)



A new Certificate of Materials Origin Form (CMO) has been developed to be utilized in determining the origin of Iron/Steel, Construction Materials, and Manufactured Products. This will replace all previous versions of the CMO Forms.

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CERTIFICATE OF MATERIALS ORIGIN (CMO)



When are CMOs due from the Contractor to the Agency?

a) At the time of bid

b) Before incorporating the materials into the project

c) Between Second Notification and Third Notification

d) Anytime prior to project closeout

Answer:
b) Before incorporating the materials into the project

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CERTIFICATE OF MATERIALS ORIGIN FORM (734-5486)

Department of Transportation

Certificate of Materials Origin

Iron/Steel, Construction Material (CM) & Manufactured Product (MP)

Big Dig and Pave — Project Name (Section)

C17123 — Contract No.

0510 — Bid Item No.

Sign on plywood — Bid Item Name

Product Information (as manufactured)

Sign — Material Description

Stop sign — Product Name (as manufactured)

Sid's Signs — Manufacturer's Name

NA — QPL Product Number

Materials Source (including material of unknown origin)

Component Material Type(s)	Source: City and State/Country	Foreign/ Unknown	Value of Component	Component % by Cost	%
Lumber	Vancouver, BC	☒	$800.00	40.47	%
Non-ferrous metal	The Dalles, OR	☐	$799.50	40.44	%
Other	Dallas,TX	☐	$300.49	15.2	%
Non-ferrous metal	Fairbanks, AK	☐	$77.02	3.9	%
		☐	$0.00	0	%
		☐	$0.00	0	%
		Total	$1,977.01	100	%

Manufactured Product Assembly (list location of final product assembly)

City	State	Country
Dallas	TX	US

ODOT MATERIALS & INSPECTION

Oregon Department of Transportation

Print Form

Certificate of Materials Origin

Iron/Steel, Construction Material (CM) & Manufactured Product (MP)

Project Name (Section) — Contract No.

Bid Item No. — Bid Item Name

Product Information (as manufactured)

Material Description

Product Name (as manufactured)

Manufacturer's Name — QPL Product Number

Materials Source (including material of unknown origin) — Add Row

Component Material Type(s)	Source: City and State/Country	Foreign/ Unknown	Value of Component	Component % by Cost	%	X
Lumber	Winnipeg, Manitoba-Canada	☒	$100.00	10	%	
Non-ferrous metal	The Dalles, Oregon-US	☐	$800.00	80	%	
Other	Dallas, Texas-US	☐	$100.00	10	%	
		Total	$1,000.00	100	%	

Manufactured Product Assembly (list location of final product assembly)

City	State	Country
Dallas	Texas	US

This certification is made for the purpose of establishing materials acceptable under the Contract Specifications titled 00160.20(a) Buy America and 00160.20(d) Build America Buy America. All manufacturing processes for the domestic materials described above occurred within the United States of America.

Manufacturers' certificates verifying the origin of the above-described domestic materials will be kept on file for three years following final payment. Copies will be furnished to the Engineer upon request.

I declare under penalty of perjury or falsification under Oregon and Federal laws that the foregoing is true and correct.

Authorized Representative*

Name

Title

Sign

Date

Company* Name and Address

Company

Address 1

Address 2

City/State/Zip

*May be Contractor, Subcontractor or Supplier

Submit a new certificate for subsequent shipments if any of the above information changes.

DE MINIMIS ALLOWANCES

- For projects with assistance of $500K or more:

BABA –

For non-compliant construction materials and manufactured products, the lesser of $1M or 5% of total applicable costs applies.

- Need to determine “total applicable costs” for the project.
- Use Build America Buy America Total Applicable Costs Worksheet, form 734-5436.

Buy America –

For non-compliant iron and steel, the greater of one-tenth of one percent (0.1%) of the total contract amount or $2,500 allowance still applies.

- Total contract amount is the final contract amount, including changes.
- Use Foreign Steel Summary, form 734-1968.

TOTAL APPLICABLE COSTS WORKSHEET, FORM 734-5436

Oregon Department of Transportation

Build America Buy America Act
Total Applicable Costs Worksheet

Print Form

Big Dig and Pave
Project Name (Section)

C17123
Contract No.

Materials costs that count toward the total applicable costs. Submit this worksheet to the RE Office when any construction materials of foreign or unknown origin are first incorporated into the Project to estimate total applicable costs for the Project and following completion of all On-Site Work. This worksheet must also be submitted upon the Engineer's request. Include iron and steel, manufactured products, and construction materials.

Materials costs that DO NOT count toward total applicable costs include temporary items and exempted items. BABA does not apply to temporary items. The BABA preference only applies to articles, materials and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. BABA excludes asphalt products, cement and cementitious products, aggregates, ore concrete additives.

Bid Item #	Material	Estimated Cost Left to Complete Bid Item	Incorporated Cost to Date	Applicable Cost
0240	Geotextile		$3,025.36	$3,025.36
0280	Guardrail		$28,432.40	$28,432.40
0330	Attenuator		$44,000.00	$44,000.00
0340	Sign supports		$132,560.99	$132,560.99
0380	Cantilever Signs		$289,765.50	$289,765.50
0430	ITS systems		$625,160.75	$625,160.75
0510	Reinforcement		$21,633.33	$21,633.33
0550	PVC Pipe		$18,634.33	$18,634.33
Add Row			Total Applicable Costs	$1,163,212.66

This summary represents the total applicable costs of materials that have been, or have been estimated to be, incorporated into the contract under the Contract Specifications titled 00160.20(d) Build America Buy America. Copies of records and/or invoices used to determine these costs will be furnished to the Engineer upon request according to 00170.07.

Authorized Representative

Company

Date

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CALCULATE TOTAL APPLICABLE COSTS

Add the ***actual*** costs of the following materials to determine the **Total Applicable Costs**:

+ Iron and steel
+ Manufactured products
+ Construction Materials

Or just use the worksheet!

ODOT MATERIALS & INSPECTION

FOREIGN CONSTRUCTION MATERIALS & MANUFACTURED PRODUCTS SUMMARY FORM 734-5437

Oregon Department of Transportation

Foreign Construction Materials & Manufactured Products Summary

Print Form

Big Dig and Pave
Project Name (Section)

C17123
Contract No.

☐ No Foreign Construction Materials or Manufactured Products used on this Project

$1,163,212.66
Total Applicable Project Costs

NCC 1701
Federal Aid No.

Bid Item No.	Foreign Materials Description	FHWA Approved Waiver Item	Quantity	Units	Foreign Cost Per Unit	Total Foreign Cost	Cumulative Foreign Cost
0550	6" PVC pipe from Canada	☐	10.00	10'	$55.25	$552.50	$552.50
0280	Wood posts from Mexico	☐	10.00	6'	$25.55	$255.50	$808.00
		☐					$808.00
		☐					$808.00
		☐					$808.00
		☐					$808.00
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		☐					$808.00
		☐					$808.00
		☐					$808.00
		☐					$808.00
Total Value of Permanently Incorporated Foreign Construction Materials and Manufactured Products							**$808.00**

EXAMPLE

The total value of the non-compliant products (with foreign or unknown origin) is no more than the lesser of $1,000,000 or 5% of the total applicable costs for the project.

Percent of Non-Compliant Products (foreign or unknown origin) = Total Cumulative Foreign Cost / Total Applicable Project Cost (obtained from Form 734-5436)

$808.00 / $1,163,212.66

0.07%

Resident Engineer Representative (signature) _____ Date _____

Region Assurance Specialist (signature) _____ Date _____

Use form for all projects that must comply with Section 00160.20(d) and contain permanently incorporated construction materials or manufactured products.
See contract special provisions for restrictions on foreign construction materials and manufactured products.

734-5437 (10-23-2025)

1 of 1

ODOT MATERIALS & INSPECTION

Form 734-5437 Calculation:

Non-Compliant Construction Materials & Manufactured Products

EXAMPLE

The total value of the non-compliant products (with foreign or unknown origin) is no more than the lesser of $1,000,000 or 5% of the total applicable costs for the project.

$$\text{Percent of Non-Compliant Products (foreign or unknown origin)} = \frac{\text{Total Cumulative Foreign Cost}}{\text{Total Applicable Project Cost (obtained from Form 734-5436)}} \quad \frac{\$808.00}{\$1{,}163{,}212.66}$$

0.07%

ODOT MATERIALS & INSPECTION

Contract Administration

CONSTRUCTION HOME

AASHTOWare Project™

Events and Conferences

SERVICES

Contract Administration

Lab Services

Quality Assurance

Structure Services

TRAINING & CERTIFICATION

The Contract Administration Unit is responsible for uniform administration of all Oregon Department of Transportation construction contracts including:

- Contract payments;
- Contract change orders;
- Labor compliance;
- Document compliance;
- Measurement and payment;
- Contractor's claims or disputes.



Tools & Resources

Tools +

Build America Buy America Act +

Contact the Construction Section

800 Airport Road SE
Salem, Oregon 97301
Phone: (503) 986-3000
Fax: (503) 986-3096
Email the Construction Section

Contract Administration Field Personnel

Visit this page for more **service resources**.

CONTRACT ADMINISTRATION WEBSITE

https://www.oregon.gov/odot/Construction/Pages/Contract-Administration-Services.aspx

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BABA WEBSITE TOOLS

Build America Buy America Act

- Build America Buy America Tools
  - Buy America Exempted Items List (projects before July 1, 2024)
  - BABA Listing and Material Classification of Unique Items
- Memo from the State Construction and Materials Engineer
  - Blue Sheets
  - Materials Classification Guide
  - Current Qualified Products (QPL) List
- BABA Memorandums
  - CA009 – Removal of Buy America Exempted Items List (posted 6-25-2024)
  - CA010 – Build America Buy America (BABA) Resources and the Accounting of Foreign or Unknown Origin Construction Materials (posted 1-16-2025)

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Questions?



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BREAKTIME!





CMO EXAMPLES

Presented by Scott Aker, Contract Compliance Specialist

Oregon Department of Transportation

CERTIFICATE OF MATERIALS ORIGIN

Form #734-5486

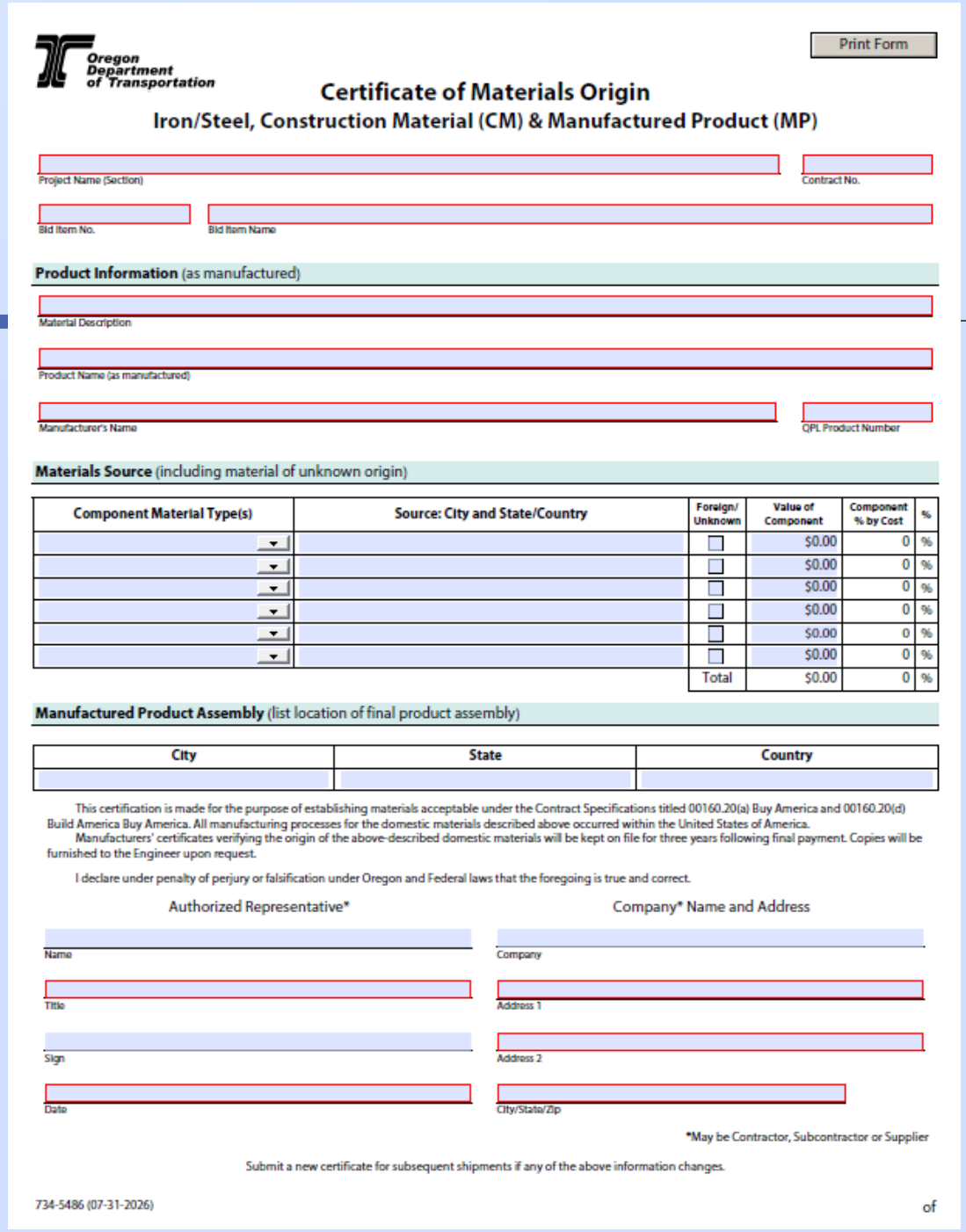
Iron/Steel

- Evaluate compliance with 00160.20(a) – Buy America

Construction Materials

Manufactured Products

- Evaluate compliance with 00160.20(d) – Build America Buy America



Oregon Department of Transportation

Print Form

Certificate of Materials Origin

Iron/Steel, Construction Material (CM) & Manufactured Product (MP)

Project Name (Section) | Contract No.

Bid Item No. | Bid Item Name

Product Information (as manufactured)

Material Description

Product Name (as manufactured)

Manufacturer's Name | QPL Product Number

Materials Source (including material of unknown origin)

Component Material Type(s)	Source: City and State/Country	Foreign/ Unknown	Value of Component	Component % by Cost	%
		☐	$0.00	0	%
		☐	$0.00	0	%
		☐	$0.00	0	%
		☐	$0.00	0	%
		☐	$0.00	0	%
		☐	$0.00	0	%
		Total	$0.00	0	%

Manufactured Product Assembly (list location of final product assembly)

City	State	Country

This certification is made for the purpose of establishing materials acceptable under the Contract Specifications titled 00160.20(a) Buy America and 00160.20(d) Build America Buy America. All manufacturing processes for the domestic materials described above occurred within the United States of America.

Manufacturers' certificates verifying the origin of the above-described domestic materials will be kept on file for three years following final payment. Copies will be furnished to the Engineer upon request.

I declare under penalty of perjury or falsification under Oregon and Federal laws that the foregoing is true and correct.

Authorized Representative* | Company* Name and Address

Name | Company

Title | Address 1

Sign | Address 2

Date | City/State/Zip

*May be Contractor, Subcontractor or Supplier

Submit a new certificate for subsequent shipments if any of the above information changes.

734-5486 (07-31-2026) of

PHASE 1 – EXAMPLE 1

FHWA funding obligated **on or after October 1, 2025**

Materials Source (including material of unknown origin) — Add Row

Component Material Type(s)	Source: City and State/Country	Foreign/ Unknown	Value of Component	Component % by Cost	%	X
Lumber	Winnipeg, Manitoba-Canada	☒	$200.00	20	%	
Non-ferrous metal	Beijing-China	☒	$800.00	80	%	
		☐			%	
		Total	$1,000.00	100	%	

Manufactured Product Assembly (list location of final product assembly)

City	State	Country
Dallas	Texas	US

This certification is made for the purpose of establishing materials acceptable under the Contract Specifications titled 00160.20(a) Buy America and 00160.20(d) Build America Buy America. All manufacturing processes for the domestic materials described above occurred within the United States of America.

Manufacturers' certificates verifying the origin of the above-described domestic materials will be kept on file for three years following final payment. Copies will be furnished to the Engineer upon request.

I declare under penalty of perjury or falsification under Oregon and Federal laws that the foregoing is true and correct.

Authorized Representative*

Company* Name and Address

Oregon Department of Transportation

PHASE 1 – EXAMPLE 1
QUESTION

FHWA funding obligated **on or after October 1, 2025**

- 2 Component Manufactured Product
  - 20% - Cost of Component from Canada
  - 80% - Cost of Component from China
- Final Assembly occurred in the USA.

Domestic or Foreign??

PHASE 1 – EXAMPLE 1
ANSWER

FHWA funding obligated
on or after October 1, 2025

DOMESTIC

- ✓ Final Assembly occurred in the USA

PHASE 1 – EXAMPLE 2

FHWA funding obligated **on or after October 1, 2025**

Materials Source (including material of unknown origin) — Add Row

Component Material Type(s)	Source: City and State/Country	Foreign/ Unknown	Value of Component	Component % by Cost	%	X
Lumber	Winnipeg, Manitoba-Canada	☒	$200.00	20	%	
Non-ferrous metal	The Dalles, Oregon-US	☐	$800.00	80	%	
		☐			%	
		Total	$1,000.00	100	%	

Manufactured Product Assembly (list location of final product assembly)

City	State	Country
Vancouver	British Columbia	Canada

This certification is made for the purpose of establishing materials acceptable under the Contract Specifications titled 00160.20(a) Buy America and 00160.20(d) Build America Buy America. All manufacturing processes for the domestic materials described above occurred within the United States of America.

Manufacturers' certificates verifying the origin of the above-described domestic materials will be kept on file for three years following final payment. Copies will be

Oregon Department of Transportation

PHASE 1 – EXAMPLE 2
QUESTION

FHWA funding obligated **on or after October 1, 2025**

- 2 Component Manufactured Product
  - 20% - Cost of Component from Canada
  - 80% - Cost of Component from USA
- Final Assembly occurred in Canada.

Domestic or Foreign??

PHASE 1 – EXAMPLE 2

ANSWER

FHWA funding obligated **on or after October 1, 2025**

FOREIGN

- Final Assembly occurred outside the USA

PHASE 2 – EXAMPLE 1

FHWA funding obligated **on or after October 1, 2026**

Materials Source (including material of unknown origin) — Add Row

Component Material Type(s)	Source: City and State/Country	Foreign/ Unknown	Value of Component	Component % by Cost	%	X
Lumber	Winnipeg, Manitoba-Canada	☒	$400.00	40	%	
Non-ferrous metal	The Dalles, Oregon-US	☐	$600.00	60	%	
		☐			%	
		Total	$1,000.00	100	%	

Manufactured Product Assembly (list location of final product assembly)

City	State	Country
Eugene	Oregon	US

Oregon Department of Transportation

PHASE 2 – EXAMPLE 1

QUESTION

FHWA funding obligated **on or after October 1, 2026**

- 2 Component Manufactured Product
  - 40% - Cost of Component from Canada
  - 60% - Cost of Component from USA
- Final Assembly occurred in USA.

Domestic or Foreign??

PHASE 2 – EXAMPLE 1

ANSWER

FHWA funding obligated **on or after October 1, 2026**

DOMESTIC

- ✓ Final Assembly occurred in the USA
- ✓ Greater than 55% of the cost of components are mined, produced, or manufactured in the USA

PHASE 2 – EXAMPLE 2

FHWA funding obligated **on or after October 1, 2026**

Materials Source (including material of unknown origin) — Add Row

Component Material Type(s)	Source: City and State/Country	Foreign/ Unknown	Value of Component	Component % by Cost	%	X
Lumber	Winnipeg, Manitoba-Canada	☒	$400.00	40	%	
Non-ferrous metal	The Dalles, Oregon-US	☐	$600.00	60	%	
		☐			%	
		Total	$1,000.00	100	%	

Manufactured Product Assembly (list location of final product assembly)

City	State	Country
Vancouver	British Columbia	Canada

Oregon Department of Transportation

PHASE 2 – EXAMPLE 2
QUESTION

FHWA funding obligated **on or after October 1, 2026**

- 2 Component Manufactured Product
  - 40% - Cost of Component from Canada
  - 60% - Cost of Component from USA
- Final Assembly occurred in Canada.

Domestic or Foreign??

PHASE 2 – EXAMPLE 2

ANSWER

FHWA funding obligated **on or after October 1, 2026**

FOREIGN

- ✓ Greater than 55% of the cost of components are mined, produced, or manufactured in the USA
- ▪ Final Assembly occurred outside the USA

PHASE 2 – EXAMPLE 3

FHWA funding obligated **on or after October 1, 2026**

Materials Source (including material of unknown origin) — Add Row

Component Material Type(s)	Source: City and State/Country	Foreign/ Unknown	Value of Component	Component % by Cost	%	X
Lumber	Winnipeg, Manitoba-Canada	☒	$600.00	60	%	
Non-ferrous metal	The Dalles, Oregon-US	☐	$400.00	40	%	
		☐			%	
		Total	$1,000.00	100	%	

Manufactured Product Assembly (list location of final product assembly)

City	State	Country
Eugene	Oregon	US

Oregon Department of Transportation

PHASE 2 – EXAMPLE 3
QUESTION

FHWA funding obligated **on or after October 1, 2026**

- 2 Component Manufactured Product
  - 60% - Cost of Component from Canada
  - 40% - Cost of Component from USA
- Final Assembly occurred in USA.

Domestic or Foreign??

PHASE 2 – EXAMPLE 3

ANSWER

FHWA funding obligated **on or after October 1, 2026**

FOREIGN

- ✓ Final Assembly occurred in the USA
- Less than 55% of the cost of components are mined, produced, or manufactured in the USA

PHASE 2 – EXAMPLE 4

FHWA funding obligated **on or after October 1, 2026**

Materials Source (including material of unknown origin) — Add Row

Component Material Type(s)	Source: City and State/Country	Foreign/ Unknown	Value of Component	Component % by Cost	%	X
Lumber	Winnipeg, Manitoba-Canada	☒	$490.00	49	%	
Non-ferrous metal	The Dalles, Oregon-US	☐	$510.00	51	%	
		☐			%	
		Total	$1,000.00	100	%	

Manufactured Product Assembly (list location of final product assembly)

City	State	Country
Eugene	Oregon	US

Oregon Department of Transportation

PHASE 2 – EXAMPLE 4
QUESTION

FHWA funding obligated **on or after October 1, 2026**

- 2 Component Manufactured Product
  - 49% - Cost of Component from Canada
  - 51% - Cost of Component from USA
- Final Assembly occurred in USA.

Domestic or Foreign??

PHASE 2 – EXAMPLE 4

ANSWER

FHWA funding obligated **on or after October 1, 2026**

FOREIGN

- ✓ Final Assembly occurred in the USA
- Less than 55% of the cost of components are mined, produced, or manufactured in the USA



Questions?

Oregon Department of Transportation



PUTTING THE PIECES TOGETHER

NON-COMPLIANT MATERIALS OVER THE DE MINIMIS



How is the Contractor to address non-compliant materials over the de minimis allowances?

a) Request a close-conformance exception if it's just a little over the de minimis.

b) Request a contract change order to modify the Buy America or BABA requirements in the contract.

c) Remove and replace non-compliant materials over the de minimis allowances at the Contractor's expense.

Answer: c) Remove and replace non-compliant materials over the de minimis allowances at the Contractor's expense.

ODOT MATERIALS & INSPECTION

WHAT HAPPENS IF . . .

There is an after-the-fact discovery of inadvertently incorporated foreign products into a federal-aid project?

This can trigger FHWA review of:

- State's materials certification procedures
- Degree of diligence by the state and contracting agency to ensure compliance
- Related contract provisions
- Domestic availability of the products in question
- Issues associated with removal and replacement

Possible consequences:

- Removal and replacement of excess foreign products
- Federal non-participation in the costs of the non-compliant products
- Federal non-participation in the costs of the entire project



Oregon Department of Transportation

TIPS



Pay attention to the federal authorization date to determine which rules apply.

READ!!! your Agency's General Conditions and Special Provision language to confirm what it says in 00160.20(a) and (d).

Know which De Minimis allowance is used for the materials you are working with.

Review the applicable specifications and forms with your contractor at construction kick-off

ODOT MATERIALS & INSPECTION

FEDERAL 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

FHWA Construction Program Guide: Buy America
(includes Q&As and other BABA related resources)

USDOT Made in America (includes links to general and project-specific waivers)

Made in America Waivers Data (searchable database)

ODOT RESOURCES

- Boilerplate Special Provisions
- Contract Administration page (see Build America Buy America drop down)
- Certificate of Materials Origin Form 734-5486
- Build America Buy America Total Applicable Costs Worksheet Form 734-5436
- Foreign Construction Materials and Manufactured Products Summary Form 734-5437
- Materials Classification Guide

OTHER RESOURCES



AGC Build America Buy America Act Resource Hub



Finding Domestic Suppliers Resource

CONTACTS

General Information & Certificate of Material Origin (CMO) Forms:
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ODOT Local Agency Certification Program:
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