



| Buy America & More



RAUL V. BRAVO + ASSOCIATES, INC.

Transportation Planners and Engineers

| The Basics

- 49 USC 5323(j)
- FTA promulgates rules
 - 49 CFR 661 and 663
 - Posted interpretations - <https://www.transit.dot.gov/buyamerica>
 - Enforced in triennial, PSR, PMO programs
- Iron and steel
- Manufactured products
 - Rolling stock waiver

| Steel and Iron

- “The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements **do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock**, or to bimetallic power rail incorporating steel or iron components.”

| The Manufactured Product Process

- Identify the end product
- End product means any vehicle, structure, product, article, material, supply, or system,
 - ...which directly incorporates constituent components at the final assembly location,
 - ...that is acquired for public use under a federally-funded third-party contract,
 - ...and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s).
 - A list of representative end products is included at Appendix A to this section. 49 CFR 661.3

| What Is/Are the End Product(s)?

- **Bob Hope Airport – Regional Intermodal Transportation Center - July 11, 2014**
 - “FTA considers the fire alarm system, lighting system, and power system addressed in your letter to be “manufactured end products” having separate Buy America obligations, rather than as “components” of the larger” project
- **Second Avenue Subway Project's Water Mist Fire Suppression System – January 6, 2015**
 - “I find that a water mist fire suppression system is a manufactured end product, and that each of its components—pipe tubing, pipe fitting, pipe and tube support, valves, a pump controller unit, nozzles and fittings, alarm devices, pressure gauges, and Schedule 40 pipe—must be manufactured in the United States.”

| Components and Subcomponents

- A component is any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an end product at the final assembly location. 49 CFR 661.3
- A subcomponent is any article, material, or supply, whether manufactured or unmanufactured, that is one step removed from a component in the manufacturing process and that is incorporated directly into a component. 49 CFR 661.11(f)

| Manufactured Products

- What makes it “produced in the United States?”
- For a manufactured product to be considered produced in the United States:
 - (1) All of the manufacturing processes for the product must take place in the United States; and
 - (2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d)

| A Bit Earlier...

Infrastructure Investment and Jobs Act

- Pub. L. No. 117-58, November 15, 2021
- Often promoted as the “Bipartisan Infrastructure Law”
- Includes *Build America, Buy America Act* at sections 70901-52

OMB rulemaking

- Notice of Proposed Rulemaking, 88 FR 8374, February 9, 2023
- Proposed 2 CFR Part 184, *Buy America Preference for Infrastructure Projects*

| And Now...

- OMB published its final 'guidance' on August 23
 - 88 *Federal Register* 57750
 - 2 CFR Parts 184 and 200
- DOT published a notice 'Waiver of Buy America Requirements for De Minimis Costs and Small Grants' on August 16
 - 88 *Federal Register* 55817

Application to Grant Awards

- What does FTA say?

Grant Obligation Date	Does Construction Materials Requirement Apply?	Category
Before November 10, 2022	NO	Category 1
On or after January 30, 2023	YES, unless the new waiver applies.	Category 2
November 10, 2022 - January 29, 2023	YES, with very limited exceptions in new waiver. Ask FTA.	Category 3

Application to Grant Awards

- What does FTA say?

Category 2:

FTA Grants Obligated On or After January 30, 2023

- January 30, 2023 is the effective date of DOT's contracts and solicitations waiver
- For grants obligated on or after January 30, 2023, the construction materials requirement is waived for:
 1. Any contract executed before May 14, 2022
 2. Any contract executed on or after May 14 and before November 10, 2022, but
 - ONLY for construction materials a contractor takes delivery of before October 1, 2024
 3. Any contract executed on or after November 10, 2022, and before March 10, 2023, but—
 - ONLY if the contract results from a solicitation published prior to May 14, 2022, AND
 - ONLY for construction materials a contractor takes delivery of before October 1, 2024.

Application to Grant Awards

- What does FTA say?

		Date of Grant(s) Obligated for Construction Activity		
		On or before Nov. 9, 2022	Nov. 10, 2022 – Jan. 29, 2023	Jan. 30, 2023 and Beyond
Date of Contract Execution for Construction Materials	On or before May 13, 2022	EXEMPT from BABA CM Requirement	Consult FTA	EXEMPT from BABA CM Requirement
	May 14, 2022 – Nov. 9, 2022			Special Rule (Consult FTA)
	Nov. 10, 2022 – Mar. 9, 2023			Special Rule (Consult FTA)
	Mar. 10, 2023 and Beyond		MUST COMPLY with BABA CM Requirement	

Coverage

IIJA	OMB Guidance	Pre-BABA Buy America Rule
All iron and steel	Wholly or predominantly iron or steel articles, materials, supplies	Structural iron and steel in construction projects
Manufactured products	Not iron/steel and not a construction material	Everything other than rolling stock
Construction materials	Construction materials	Subsumed into manufactured products
Neither the IIJA nor the OMB guidance address rolling stock and the FTA practice remains unchanged		Rolling stock

Construction Materials

IIJA	OMB Guidance
Non-ferrous metals	Non-ferrous metals
Plastic and polymer-based products (including PVC composite and polymers used in fiber optic cable)	Plastic and polymer-based products
***	Fiber optic cable
Glass (including optic glass)	Glass
***	Optical fiber
Lumber	Lumber
***	Engineered wood
Drywall	Drywall

Nature of the OMB Guidance

- **NOT** a binding regulation
 - Part 184 “is not intended as comprehensive guidance”
 - Part 184 “is intended to be high-level coordinating guidance for Federal agencies to use in their own direct implementation of BABA.”
 - “Federal agencies must supplement their existing requirements”
- Neither FTA nor DOT has issued substantive guidance

| We Need An Interim Solution

- Determine whether BABA applies based on grant date
- When it does
 - Pre-solicitation process
 - Outreach to prospective bidders
 - Internal training and organization
 - Pre-notice to proceed process with selected contractor
 - Monitoring

| Pre-Solicitation

- Coordination with FTA regional staff
 - Proposed approach
 - Draft certification
 - Definitions
 - Construction materials
 - End products – including any rolling stock end products
 - Components
 - Oversight planning
- Still key, at least until FTA/DOT fill in the blanks

| Outreach to Prospective Bidders

- Overview of Buy America requirements
 - End products and components per *Bob Hope Airport* decision
 - Segregation for analysis of any rolling stock system
 - Overlay and application of BABA for select construction materials
 - Standards for each category of materials
 - Analysis of other materials
- Certification requirements
- Requirement to designate responsible representative(s)
- Reporting requirements
- Agency oversight and designation of key agency personnel

| Internal Training

- Overview of Buy America requirements
 - Key personnel
 - End products and components per *Bob Hope Airport* decision
 - Segregation for analysis of any rolling stock system
 - Overlay and application of BABA for select construction materials
 - Standards for each category of materials
 - Analysis of other materials
 - Inspectors and other on-site personnel
 - Key aspects of compliance
 - Identifying and reporting potential foreign materials

| Pre-NTP Steps

- Buy America and BABA compliance plan
 - Designated responsible representative(s)
 - Contractor approach to compliance and supplier monitoring
 - Analysis of relevant construction materials, end products, and components
 - Tracking and reporting

| Monitoring

- Receive and review reports
 - Documentation from contractor
 - Reacting to reports from on-site personnel
- Conducting spot checks of incoming materials
 - Rebar and other steel materials
 - Materials to be concealed or covered!
 - Electrical, plumbing, fire alarm, fire suppression and other systems
- Record keeping

| Proposing and Applying the Standards

- **Iron and steel products**
 - Structural materials
 - Not bolts, rivets, other hardware, or any non-structural material
- **Rolling stock end products**
 - Train control, communications, traction power system materials
- **Manufactured products**
 - Everything that remains after deducting iron/steel, rolling stock, and construction materials
 - Defined end products per *Bob Hope Airport*

Construction Materials

Material	Standard
Non-ferrous metals	Melted (and everything after) in the US – look for certificate of inspection and test results – should say “Country of Melt: United States” among other information

Construction Materials

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Identifying Stamps on Drywall Used for Interior Wall & Ceiling Surfaces



Index to photos of identification stamps and markings that help identify brands and types of drywall or gypsum board.

[Click to enlarge any image]

Since 2017, in North America, the following general format is used for drywall identification stamps (USGA 2017)

COMPANY NAME AAA2 0101010930 CCC

- **COMPANY NAME** of the drywall manufacturer (the company is permitted to encode this data using other characters)
- **AAA 2** indicates manufacturing facility and production line number
- **0101010930** identifies the date and time that the drywall was manufactured - in this example, 1 January 2001, at 09:30 hrs.
- **CCC** - 3-character country ID code as given in the table below **Country Code - USA**

<https://inspectapedia.com/interiors/Drywall-Identification-Stamps.php>

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Lumber	Initial debarking and everything after – look for the stamp for the Mill Identification Number



Share this:   

If you want to know more about the lumber that you purchase, your search doesn't have to stop with the lumber store. Did you ever wonder what that stamp on the side of your lumber stood for? That tiny stamp holds a wealth of information. Every piece of lumber sold in the United States, whether it's finished lumber, framing or composite wood, must have a grade stamp upon it. These stamps can help ensure that lumber will meet design expectations.

The lumber grade stamp tells you:

- The species of wood or the species group that it belongs to.
- The actual grade of lumber SEL STR (select structural), No. 1, No. 2, and No. 3.
- The symbol or seal of the grading agency.
- The Mill identification number.
- The moisture content of the wood, also known as the condition of seasoning.

Lumber grading stamps are result of a long-standing effort to standardize lumber. In 1924, the first American Lumber Standard was published. The standard, now called the American Softwood Lumber Standard has evolved over the years and kept current with the constantly changing needs of consumers, regulators and manufacturers. The American Lumber Standard Committee provides a list of inspection agencies accredited by their board of review. This list, located [here](#), also includes examples of lumber grade stamps and a guide on how to interpret them properly.

<https://johnstonsbm.com/blog/66241/know-where-your-lumber-comes-from>

Mill numbers can be found at <https://www.tpinspection.com/Lumber-Mill-Listing-by-Name.pdf>

Construction Materials

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Drywall	Initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels – look for the codes
Lumber	Initial debarking and everything after – look for the stamp for the Mill Identification Number
Glass	Initial batching and melting of raw materials through annealing, cooling, and cutting – No real marking but look for the manufacturer

Largest Glass Manufacturers in the U.S.

Here are the top 10 largest manufacturers in this sector.

Top Companies	City	State	Number of Employees
Gentex Corp.	Zeeland	MI	5,000
Fuyao Glass America, Inc.	Moraine	OH	2,300
Pella Corp.	Pella	IA	2,224
Viracon	Owatonna	MN	2,000
Safelite AutoGlass	Columbus	OH	1,600
Anchor Hocking Co.	Lancaster	OH	1,200
SMR Automotive	Marysville	MI	1,085
Corning, Inc., Optical Fibers Div.	Wilmington	NC	1,000
Gallo Glass Co.	Modesto	CA	1,000
Kolbe & Kolbe Millwork Co., Inc.	Wausau	WI	1,000

<https://www.industryselect.com/blog/10-largest-glass-manufacturers-in-the-usa>

Construction Materials

Material	Standard
Plastic and polymer-based products (including PVC, composite building materials, and polymers in fiber optic cables)	Initial combination of constituent, plastic or polymer-based inputs until the item is in a form in which it is delivered to the work site – no common means of identifying the source of materials given the breadth of this material category – can only rely on a vendor’s certification and check for markings on the materials

- Major US PVC manufacturers

Company	Location	Year Founded	No. of Employees
<u>IPEX</u>	Pineville, NC	1992	1000+
<u>Applied Plastics Co., Inc.</u>	Oak Creek, WI	1955	50-99
<u>Inline Plastics, Inc.</u>	Ontario, CA	1996	10-49
<u>Lincoln Plastics</u>	Lincoln, NE	1948	10-49
<u>NewAge Industries, Inc.</u>	Southampton, PA	1954	200-499
<u>Colonial Teltek</u>	King of Prussia, PA	1972	200-499
<u>Guenther Supply, Inc.</u>	Fond Du Lac, WI	1946	10-49
<u>American Precision Supply, Inc.</u>	Hampshire, IL	2002	10-49
<u>Emco Industrial Plastics, Inc.</u>	Cedar Grove, NJ	1983	50-99
<u>Industrial Plastic Supply, Inc.</u>	Anaheim, CA	1975	10-49

Construction Materials

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Plastic and polymer-based products	Initial combination of constituent, plastic or polymer-based inputs until the item is in a form in which it is delivered to the work site – no common means of identifying the source of materials given the breadth of this material category – can only rely on a vendor's certification and check for markings on the materials and wrappings.
Engineered wood	Initial combination of constituent materials until in its final form. Some – not all – engineered wood will carry mill identification numbers, just like lumber

APA

1 — RATED STURD-I-FLOOR
2 — **24 oc**
3 — SIZED FOR SPACING
T&G NET WIDTH 47-1/2
4 — EXPOSURE 1
5 — THICKNESS 0.703 IN.
6 — **000**
7 — PS 1-15 UNDERLAYMENT
8 — 23/32 CATEGORY

<https://www.apawood.org/apa-trademark>

APA

1 — RATED SHEATHING
2 — **48/24**
3 — SIZED FOR SPACING
4 — EXPOSURE 1
5 — THICKNESS 0.703 IN.
6 — **000**
7 — PS 2-16 SHEATHING
8 — HUD-UM-40
9 — 23/32 CATEGORY
10 — CONSTRUCTION SHEATHING
11 — **2R48/2F24**
12 — EXTERIOR
13 — 18mm
14 — CSA 0325-16
15 — STRENGTH AXIS THIS DIRECTION

APA

1 — RATED SIDING
2 — 303-18-S/W
3 — **16 oc** GROUP 1
4 — SIZED FOR SPACING
5 — EXTERIOR
6 — THICKNESS 0.322 IN.
7 — **000**
8 — PS 1-15 UNDERLAYMENT
9 — HUD-UM-40
10 — 11/32 CATEGORY

Construction Materials

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Plastic and polymer-based products	Initial combination of constituent, plastic or polymer-based inputs until the item is in a form in which it is delivered to the work site – no common means of identifying the source of materials given the breadth of this material category – can only rely on a vendor's certification and check for markings on the materials and wrappings.
Engineered wood	Initial combination of constituent materials until in its final form. Some – not all – engineered wood will carry mill identification numbers, just like lumber
Fiber optic cable	Ribboning, buffering, stranding, and jacketing

Fiber Optic Cable Primer

- Ribbon - many parallel fibers are embedded in a plastic material, forming a flat ribbon-like structure
- Buffer - material that is used to protect an optical fiber or cable from physical damage and to provide mechanical isolation or protection
- Stranding – using multiple, thinner fibers
- Jacket - outer, protective covering of the cable, Also called the cable sheath
- The only material tracked to its source is the glass fiber
 - Source of buffer, clad, and other materials immaterial

| Fiber Optics Manufacturers

- Most manufacturing is in China
- Large US manufacturers
 - OFS – CT, GA, MA, NJ
 - Pepperl + Fuchs – OH
 - Schott – IN, KY, MA, NY, PA
 - But also Canada
 - Molex – IL
 - But also Canada
 - King Signal – FL
 - Find others and identify locations at <https://www.thomasnet.com/nsearch.html?cov=NA&heading=9851106&which=prod&sort=employees-desc&navsec=modify>

Construction Materials

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Engineered wood	Initial combination of constituent materials until in its final form. Some – not all – engineered wood will carry mill identification numbers, just like lumber
Fiber optic cable	Ribboning, buffering, stranding, and jacketing
Optical fiber	Initial preform fabrication through the draw

Optical Fiber Primer

- Good explanations – minimal jargon and lots of pictures – are at <https://www.popsci.com/story/technology/corning-fiber-optic-factory-glass/> and https://www.thorlabs.com/newgrouppage9.cfm?objectgroup_id=6832#ad-image-0
- The nature of the drawn fiber means it is almost always buffered and clad on site – bare fiber is rarely sold and then for specialized applications

| Additional Ways to ID Foreign Content

- With everything, foreign materials should be marked
- 19 USC 1304
 - “...every article of foreign origin (or its container...) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article.”
- Always looking for markings on materials and packaging
 - ‘Country of origin’ or COO
 - ‘Made in...’

| The New DOT Waiver

- Published at 88 FR 55817 on August 16, 2023
- Applies to grants and sub-grants issued on or after August 16
- Applies to iron and steel, manufactured products, and construction materials
- Lesser of 5% of the ‘cost of materials used in the project’ or \$1M
 - Cumulative, and only the costs of materials – no labor, etc.
 - Does not include the value of other waived materials (e.g., FTA’s microprocessor waiver) within the limit
- Fully waived if less than \$500,000 in grant dollars on the project



Thank You!

JamesLaRusch@RVBA.com

202.309.5698



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