



#### **Presenters:**

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Similarly named but come from different sources and have different requirements.

Buy America (FHWA) – 23 USC 313; 23 CFR 635.410 Applies to Steel/Iron. Manufactured products exempt since 1983 (other than those predominantly steel/iron)



3/3/2023

Buy American (FAA) – 49 USC 50101 Applies to Steel/Iron & Manufactured Products



Build America/Buy America – Title IX, Sections 70901-70953 of IIJA/BIL

Applies to Steel/Iron, Manufactured Products, & Construction Materials



BABA allowed existing programs to continue.

Steel/Iron & Manufactured Products are unchanged from previous practices.

Construction Materials are required to be manufactured in the US for projects awarded after November 10, 2022.



#### Defined (from OMB M-22-11) as:

An article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: 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; or drywall used in the project are manufactured in the U.S.



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 (including optic glass);
- Lumber; or
- Drywall



#### **Construction Materials are not:**

- Steel/Iron (separate category)
- Manufactured Products (separate category)
- Materials exempted in BABA Section 70917 (c)
  - Cement and cementitious materials
  - Aggregates such as stone, sand, or gravel
  - Aggregate binding agents or additives

OMB M-22-11 also says to treat anything composed of two construction materials as a manufactured product.



Construction materials in the specifications:

Relies on certification like Steel/Iron

Supplier with sufficient control and knowledge of the manufacturing process.

Original manufacturer, fabricator, vendor, contractor, or subcontractor.

FHWA, certify on form 25D-62 for each construction material.

FAA, certify on form 25D-154 for each construction material.



# **FHWA Buy America Forms**

25D-60 Material Origin Certificate

Prior to award of the Contract

Whenever Contractor becomes aware of a change.



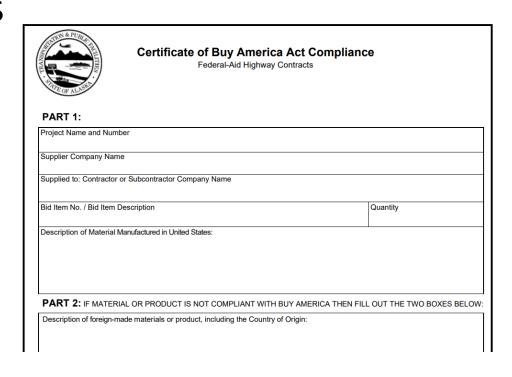


# **FHWA Buy America Forms**

25D-62 Certificate of BAA Compliance

For each covered material (US made and not)

Must be submitted prior to payment on item.





# **FAA Buy American Waivers**

Only one version of form with bids – Construction Project

Only manufactured products can be waived.

DOT&PF waiver content forms removed, use FAA forms for waivers.



# FAA Buy America Form

# 25D-154 Material Submittal for BA Compliance

Same as the 25D-62 for FHWA





# **Qualified Products List (QPL)**

Beginning to have certifications from vendors.

Still required to submit individual certifications on projects (25D-62 or 25D-154)



# **OMB Proposed Rulemaking**

- Proposed rule to replace the memo guidance.
- Changes to exemption for cement, aggregate, etc.
- Changes to combination of materials creating a manufactured product
- Changes to what produced in the US means by product.

Comments are due March 13<sup>th</sup>. Please submit comments through regulations.gov



# Resources

OMB Memo M-22-11 <a href="https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf">https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf</a>

FHWA <a href="https://www.fhwa.dot.gov/construction/cqit/buyam.cfm">https://www.fhwa.dot.gov/construction/cqit/buyam.cfm</a></a> FHWA Q&A

https://www.fhwa.dot.gov/construction/contracts/buyam\_qa\_baba.cfm

FAA <a href="https://www.faa.gov/airports/aip/buy">https://www.faa.gov/airports/aip/buy</a> american/

**OMB Proposed Rule Making** 

https://www.federalregister.gov/documents/2023/02/09/2023-02617/guidance-for-grants-and-agreements





Questions

Feedback

Thank you for participating!

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