SP107-003100-00

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
MADE IN THE USA REQUIREMENTS

October 3, 2025

SECTION 107.03 FEDERAL AID PROVISIONS of the Specifications is amended to add at the end of the section the following:

Made in the USA Requirements. All products and materials that are to be permanently incorporated into the project shall be produced in the United States in accordance with the requirements of this Special Provision, and the Buy America Act requirements in 23 CFR § 635.410, and the Build America, Buy America Act (BABA) requirements in 2 CFR Parts 184 and 200, which are incorporated by reference into this Special Provision.

(a) **Categorization of products and materials.**

Products or materials permanently incorporated into the project shall be classified into one of the following categories:

- Iron or Steel Products;
- Manufactured Products;
- BABA Construction Materials; or
- Excluded Materials.

The following Excluded Materials are exempt from any and all of the requirements of this Special Provision: cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

A product or material will not be considered to fall into multiple categories, except as otherwise provided for specified Manufactured Products. The classification of a product or material as falling into one of the categories listed above must be made based on its status at the time it is brought to the work site for incorporation into the project. In general, the work site is the location of the project at which the Iron or Steel Product, Manufactured Product, BABA Construction Material, or Excluded Material will be incorporated.

A product or material permanently incorporated into a project must meet the Made in the USA requirements for the category in which it is classified.

1. **Iron or Steel Products.** Iron or Steel Products must meet the following requirements:

    a. **Definitions**. As used in this section:

    "**Coating**" means the application of epoxy, galvanizing, painting or any other such process that protects or enhances the value of the material to which the coating is applied.

    "**Component**" means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into an iron or steel product.

    "**Domestic Iron or Steel Product**" means all iron or steel materials or products meeting the criteria as produced in the United States.

"**Iron or Steel Products**" means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both. This includes any ferrous metal.

"**Manufacturing processes**" means any process which alters or modifies the chemical content, physical size or shape, or final finish of iron or steel materials or products (such as rolling, extruding, bending, machining, fabrication, grinding, drilling, finishing, or coating). The manufacturing process is considered complete when the resultant product is ready for use as an item in the project (e.g. fencing, posts, girders, pipe, manhole covers, etc.) or is incorporated as a component of a more complex product by means of further manufacturing.

"**Non-Domestic Iron or Steel Products**" means any item containing foreign or unknown source iron or steel billet. This also includes iron or steel ingots or billets produced in the United States, but shipped outside the United States of America for any manufacturing process and returned for permanent use in a project.

"**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.

"**Produced in the United States**" means all manufacturing processes from the initial melting stage through the application of coatings, occurred in the United States, the District of Columbia, and Puerto Rico or any of the territories and possessions of the United States.

b. Requirements.

All Iron or Steel Products to be permanently incorporated for use on federal aid projects shall be Produced in the United States. This means that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. This applies to any iron or steel item brought onto the project, regardless of the percentage of iron or steel that exists in the pay item or in the final form they take.

These requirements do not apply to items used temporarily in the construction of a project such as temporary sheet piling, temporary bridges, steel scaffolding, falsework or such temporary material or product or material that remains in place for the Contractor's convenience.

Raw materials such as iron ore, pig iron, processed, pelletized and reduced iron ore, waste products (including scrap, that is, iron or steel no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, or the like and steel trimmings from mills or product manufacturing) and other raw materials used in the production of iron or steel products may, however, be imported. Extracting, handling, or crushing the raw materials which are inherent to the transporting the materials for later use in the manufacturing process are exempt from the requirements of this section.

c. Maximum Allowable Amount of Non-Domestic Iron or Steel.

The maximum allowable amount of Non-Domestic Iron or Steel that may be used in the project shall not exceed one-tenth of one percent (0.1%) of the total Contract amount or $2,500, whichever is greater. The cost of the Non-Domestic Iron or Steel Products is defined as the monetary value of such products as delivered to the work site, including transportation, assembly, installation and testing, and shall be supported by invoices or bill of sale to the Contractor.

2. **Manufactured Products.** Manufactured products must meet the following requirements:

a. **Definitions**. As used in this section:

"**Component**" means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into a manufactured product.

"**Excluded materials**" means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

"**Manufactured Product**" means an article, material, or supply that has been: (i) processed into a specific form and shape, or (ii) 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, a BABA Construction Material, or an Excluded Material in accordance with this Special Provision, 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, BABA Construction Materials, or Excluded Materials. Mixtures of Excluded Materials delivered to a work site without final form for incorporation into a project are not a Manufactured Product.

"**Manufacturer**" means the entity that performs the final manufacturing process that produces a Manufactured Product.

"**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.

"**Produced in the United States**" with respect to Manufactured Products only, means that the Manufactured Product must have had its final manufacturing process occur in the United States, the District of Columbia, and Puerto Rico or any of the territories and possessions of the United States (also known as the "final assembly requirement").

b. Requirements.

(1) General

All Manufactured Products shall be Produced in the United States. This means that, for all Manufactured Products which are permanently incorporated into the project, the final manufacturing process that produces a Manufactured Product must have occurred in the United States.

(2) For Manufactured Products containing iron, steel, or other ferrous materials:

(a) If components of the Manufactured Product are not wholly or Predominantly iron or steel or a combination of both, then the Manufactured Product shall meet the general requirements in Section (a)(2)(b)(1), above.

(b) If components of the Manufactured Product are made wholly or Predominantly of iron or steel or a combination of both, then the requirements for both Manufactured Products in Section (a)(2)(b)(1), and Iron or Steel Products Section (a)(1)(b), apply to the following:

- Precast concrete;

- Cabinets or other enclosures for traffic control systems such as, Intelligent Transportation Systems (ITS) and other electronic hardware systems.

(c) Otherwise, a Manufactured Product made wholly or Predominantly of iron or steel or combination of both is subject to the Iron or Steel Product requirements in Section (a)(1)(b), above.

c. Maximum Allowable Amount of Non-Compliant Manufactured Products.

The maximum allowable amount of non-compliant Manufactured Products that may be used on the project is limited to a total value of no more than the lesser of $1,000,000 or 5% of total applicable costs for the project.

The costs used in this calculation are the actual costs of furnishing the materials to the site, not the bid item prices. The contract cost is not a direct factor in this determination.

For this calculation, "project" refers to the single Federal financial assistance award under the scope of the applicable National Environmental Policy Act (NEPA) finding, determination, or decision, and includes all design phase, right of way phase, and construction costs for this contract and other contracts falling under the scope of the NEPA finding, determination, or decision. In addition, the ''total value of the non-compliant products'' does not include the value of those products subject to any waivers of the Made in the USA requirements.

The 5% threshold is calculated using the following formula:

(total value of all non-compliant BABA Construction Materials and Manufactured Products used on the project, combined)	÷	(total applicable costs, i.e. the total costs all compliant and non-compliant BABA Construction Materials, Manufactured Products, and iron or steel used on the project, combined).	≤	5%

3. **BABA Construction Materials.** BABA Construction Materials must meet the following requirements:

a. **Definitions**.

"**BABA Construction Materials**" means 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) of this definition. 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. However, if the addition of another material changes the nature of the construction material, even if the relative proportion of the additional material is small, then the altered material is considered a Manufactured Product, not a BABA Construction Material.

"**Excluded materials**" means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

"**Produced in the United States**" for the purpose of this section, means that all manufacturing processes for the Construction Material occurred in the United States, the District of Columbia, and Puerto Rico or any of the territories and possessions of the United States.

b. Requirements

Standards. To be considered Produced in the United States, the BABA Construction Materials listed below that are to be permanently incorporated into the project shall meet the standards specified:

(1) **Non-ferrous metals.** All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, must occur in the United States.

(2) **Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables).** All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, must occur in the United States.

(3) **Glass.** All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, must occur in the United States.

(4) **Fiber optic cable (including drop cable).** All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, must occur in the United States. All manufacturing processes also include the initial batching and melting of raw materials through annealing, cooling, and cutting for glass, and all manufacturing processes, from the initial preform fabrication stage through the completion of the draw for optical fiber, if applicable.

(5) **Optical fiber.** All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, must occur in the United States.

(6) **Lumber.** All manufacturing processes, from initial debarking through treatment and planing, must occur in the United States.

(7) **Drywall.** All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, must occur in the United States.

(8) **Engineered wood.** All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, must occur in the United States.

Only a single standard above should be applied to a single construction material.

Any items that consist of at least one of the listed BABA Construction Materials combined together through a manufacturing process with another listed BABA Construction Material or

with a non-listed item are to be classified as Manufactured Products, not BABA Construction Materials.

BABA Construction Materials requirements do not apply to the Excluded Materials; or any mixture or material composed of or derived from these items delivered to the work site without final form for incorporation into the project.

c. Maximum Allowable Amount of Non-Compliant BABA Construction Materials.

The maximum amount of non-compliant BABA Construction Materials that may be used on the project is limited to a total value of no more than the lesser of $1,000,000 or 5% of total applicable costs for the project.

The costs used in this calculation are the actual costs of furnishing the materials to the site, not the bid item prices. The contract cost is not a direct factor in this determination.

For this calculation, "project" refers to the single financial assistance award under the scope of the applicable NEPA finding, determination, or decision, and includes all design phase, right of way phase, and construction costs for this contract and other projects falling under the scope of the NEPA finding, determination, or decision. In addition, the ''total value of the non-compliant products'' does not include the value of those products subject to any waivers of the Made in the USA requirements.

The 5% threshold is calculated using the following formula:

(total value of all non-compliant BABA Construction Materials and Manufactured Products used on the project, combined)	÷	(total applicable costs, i.e. the total costs all compliant and non-compliant BABA Construction Materials, Manufactured Products, and Iron or Steel Products used on the project, combined).	≤ 5%

(b) Waivers.

Waivers of the Made in the USA requirements may only be issued by FHWA. The Contractor shall not anticipate that FHWA will waive any of these requirements. If the Contractor believes a waiver is needed, the Contractor shall promptly notify the Engineer. The Engineer will review the Contractor's request, and will coordinate with FHWA if the Contractor's request for a waiver is substantiated. The circumstances for which a waiver may be granted are set forth in: 23 U.S. Code § 313(b); BABA Public Law 117-58 § 70914 (b) through (d); and 2 CFR § 184.7.

(c) Certification of Compliance

Upon delivery and prior to permanently incorporating any items containing Iron or Steel, any Manufactured Products, or any BABA Construction Materials into the project**,** the Contractor shall certify compliance with the requirements of this Special Provision using the following forms: Form C-76 Certificate of Compliance for Iron and Steel; Form C-76A Certificate of Compliance for BABA Construction Materials; and Form C-76B Certificate of Compliance for Manufactured Products, collectively forms. Each of the forms submitted by the Contractor shall certify whether or not the items listed meet the requirements of this Special Provision, must be signed and dated by the Contractor's Superintendent or other authorized representative, and must include a Submittal Number. The Submittal Number is the Contractor's project specific sequential numbering system that will allow the Contractor and Department to track the total number of certificates provided and the individual items containing iron or steel, manufactured products, or BABA Construction Materials associated with each certificate. The Contractor shall use three separate sequential numbering sequences (1) for Iron and Steel, (2) for Manufactured Products, and (3) for BABA Construction Materials.

(d) Supporting Documentation

Supporting documentation (such as mill test reports, manufacturer/supplier certifications, etc.) to demonstrate compliance with the Made in the USA requirements shall be organized by Submittal Number and maintained by the Contractor from the date of delivery until five years after project acceptance, unless otherwise directed by the Department. The Contractor may maintain this documentation electronically or in paper format.

The Department or FHWA may review the Contractor's supporting documentation to verify compliance with these requirements at any time. Supporting documentation shall be provided within five business days of the request. The burden of proof to meet these requirements rests with the Contractor. If the supporting documentation does not undeniably demonstrate to FHWA or the Department that the iron and steel products identified on Form C-76, the BABA Construction Materials identified on Form C-76A, or the manufactured products identified on Form C-76B were produced in the United States, then the Department may deduct payment from moneys due the Contractor for the value of the iron and steel, manufactured products, or BABA Construction Materials that did not meet these requirements.