

BABA Manufacture Products Waiver Final Rule Summary

2/23/2025

The BABA manufactured products waiver final rule has come out (This can be found by **searching for [Docket No. FHWA–2023–0037] RIN 2125–AG13 Buy America Requirements for Manufactured Products AGENCY: Federal Highway ACTION: Final rule.**).

It states ‘no Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless the manufactured products used and permanently incorporated in such project are produced in the United States.’ ‘The final assembly requirement will become effective for Federal-aid projects obligated on or after **October 1, 2025. The Manufactured Products General Waiver will remain in place until this date.** In addition, the **55 percent requirement will subsequently become effective for Federal-aid projects obligated on or after October 1, 2026.** This means that, to be Buy America-compliant, for Federal-aid projects obligated on or after October 1, 2026, all manufactured products permanently incorporated into the project must both be manufactured in the United States and have the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States be greater than 55 percent of the total cost of all components of the manufactured product.’

Short version. Projects using any Federal funds must use domestic steel, iron, construction materials **and manufactured products**. This shall apply to utility relocations. Projects obligated on or after **October 1, 2025 require domestically manufactured products**. Projects obligated on or after **October 1, 2026, require domestic manufacture and they must minimally have 55% of their components’ cost be US mined, produced, or manufactured.**

Definitions of interest included below:

1. **Manufactured products** means articles, materials, or supplies that 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. If an item is classified as an iron or steel product, an excluded material, or other product category as specified by law or in 2 CFR part 184, 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, excluded materials, or other product categories as specified by law or in 2 CFR part 184. Mixtures of excluded materials delivered to a work site without final form for incorporation into a project are not a manufactured product.
2. **Produced in the United States** means that (1) the manufactured product was manufactured in the United States and (2) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. **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.

4. **Component** means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into a manufactured product or, where applicable, an iron or steel product.
5. **De Minimus waiver** under a single financial assistance award:
 1. The total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total allowable costs under the Federal financial assistance award;
 2. The size of the Federal financial assistance award is below \$500,000; or
 3. The non-domestically produced miscellaneous minor components comprise no more than 5 percent of the total material cost of an otherwise domestically produced iron or steel product.

Below are the key reasons FHWA provided for discontinuing the Manufactured Products General Waiver, as outlined in the **BABA Manufactured Products Waiver Final Rule**:

- **Congressional Intent & BABA Compliance:** The **Build America, Buy America Act (BABA)** demonstrates a preference against broad waivers, requiring agencies to review and limit such waivers to maximize domestic manufacturing.
- **Policy Alignment:** The waiver was inconsistent with **Executive Order 14005**, which aims to maximize the use of goods, products, and materials made in the U.S.
- **Domestic Manufacturing & Economic Growth:** The FHWA determined that maintaining the waiver discouraged **domestic production, job creation, and investment in U.S. manufacturing**.
- **Supply Chain Resilience & National Security:** Increasing domestic production strengthens **supply chains** and reduces dependence on foreign suppliers, which can help prevent **disruptions**.
- **Lack of Market Signals for Manufacturers:** The waiver removed incentives for manufacturers to **onshore production** and did not provide **clear market signals** about demand for domestic products.
- **Limited Economic Impact of Including Manufactured Products:** FHWA stated that the **economic effect** of applying Buy America to manufactured products was **previously underestimated** and could **now be beneficial**.
- **Administrative Burdens Not Justified:** The **complexity** of tracking manufactured products and their components was initially cited as a reason for the waiver. However, FHWA now believes that these burdens can be managed and **do not justify a broad exemption**.
- **Public Interest Justification No Longer Applies:** The original justification for the waiver in 1983 included concerns about **costs, availability, and compliance difficulty**. FHWA now believes these concerns can be **addressed through targeted waivers** rather than a **blanket exemption**.
- **Transition Strategy:** FHWA intends to **phase in** the requirements over time (final assembly by **October 1, 2025**, and the **55% domestic component requirement by October 1, 2026**) to **mitigate supply chain concerns**.

FHWA's Approach to Targeted Waivers and Timeline for Implementation

FHWA has outlined a **phased approach** for implementing Buy America requirements for manufactured products while allowing for **targeted waivers** where necessary. Here's how they plan to proceed:

1. Transition Period for Implementation

To allow time for **onshoring of production** and to assess industry readiness, FHWA is implementing a **two-phase transition** for manufactured product compliance:

Phase 1: Final Assembly Requirement (Effective October 1, 2025)

- All manufactured products must be assembled in the U.S. to qualify as Buy America-compliant.
- The waiver for manufactured products remains in effect **until this date**, allowing time for manufacturers to prepare.
- FHWA expects this to **signal the market** and encourage domestic production investment.

Phase 2: 55% Domestic Component Requirement (Effective October 1, 2026)

- In addition to the final assembly requirement, **at least 55% of a manufactured product's components (by cost) must be mined, produced, or manufactured in the U.S..**
 - This phased approach gives time for:
 - Manufacturers to **adjust supply chains**.
 - FHWA to **assess availability** and issue waivers for products not yet feasible for U.S. production.
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2. Process for Identifying Targeted Waivers

FHWA has acknowledged concerns over **domestic availability** of certain products and intends to issue **targeted, time-limited waivers** based on data collection and industry feedback.

The key steps in this process include:

A. Data Collection and Industry Engagement (2024–2025)

- FHWA will **monitor** the market response to the upcoming Buy America requirements.
- A **Request for Information (RFI)** was issued to gather feedback on which products may need **temporary exemptions**.
- Additional **outreach to manufacturers, industry groups, and state DOTs** will continue through **2024 and early 2025**.

B. Waiver Analysis & Initial Waivers (Mid-to-Late 2025)

- FHWA will **review industry responses** to determine:

- Which **specific products** are unlikely to meet the **final assembly requirement** by October 1, 2025.
- If certain categories of **manufactured products need temporary waivers** due to **lack of domestic production capacity**.
- FHWA will then **publish and propose initial waivers** through the **Federal Register** for public comment.
- Time-limited waivers will be granted where necessary, with **sunset provisions** for periodic review.

C. Monitoring & Adjusting Waivers (2025–2026)

- **Continuous monitoring** will take place for the final assembly requirement phase.
- As the **55% domestic content requirement approaches (2026)**, FHWA will:
 - **Reassess** whether any additional **targeted waivers** are needed.
 - Extend, modify, or eliminate existing waivers as **U.S. production capacity grows**.

D. Post-Implementation Waiver Process (2026 & Beyond)

- FHWA will use a **case-by-case** waiver process for **products that remain unavailable** even after the compliance deadlines.
- Agencies and contractors will be allowed to **request waivers** for specific **non-compliant products** that **cannot be sourced domestically**.

3. Guiding Principles for Targeted Waivers

- **Time-Limited:** Waivers will not be indefinite; FHWA will reassess them **periodically**.
 - **Narrowly Scoped:** Waivers will apply **only to specific products** that cannot be domestically sourced.
 - **Market Signal-Oriented:** Waivers will be used to **encourage domestic manufacturing investment**, not to replace it.
 - **Transparency & Public Input:** FHWA will publish **waiver justifications** and allow for **public comment**.
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Conclusion

FHWA intends to **phase in compliance** while ensuring flexibility through **targeted, temporary waivers**. By setting clear **compliance deadlines**, monitoring market readiness, and adjusting waivers where necessary, FHWA aims to **balance supply chain concerns with the goal of increasing domestic production**.