



U.S. Department
of Transportation
**Federal Highway
Administration**

1200 New Jersey Ave., SE
Washington, DC 20590

September 19, 2024

Fred C. Chuck, P.E
Executive Director, GMA
1801 County Road B West
Roseville, MN 55113

Dear Mr. Chuck:

Thank you for your letter of August 29, 2024, requesting any guidance that has been provided to State departments of transportation (State DOT) regarding the implementation of the Build America, Buy America (BABA) Act, enacted as Sections 70901-70927 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58)) as it affects geosynthetics on the Federal-aid program for infrastructure projects.

You mentioned that you have received numerous inquiries and statements regarding the implementation/classification of the BABA requirements from your members, customers, public agencies, and other interested parties. You also stated that many of the inquiries have created a conflict as to whether geosynthetics should be classified/categorized as manufactured products or under the new category of construction materials.

On August 23, 2023, the Office of Management and Budget (OMB) published final guidance in the Federal Register (88 FR 57750) under Title 2, Code of Federal Regulations (CFR), part 184, to support implementation of BABA. The definition of "construction material" in 2 CFR 184.3 makes clear that a construction material is a material that consists of only one of the listed items, with an exception for minor additions of articles, materials, supplies, or binding agents to a construction material. Therefore, items should generally be treated as manufactured products, rather than as construction materials, when they (1) consist of two or more of the listed construction materials that have been combined together to create a product with different properties than the individual construction materials, and (2) include at least one of the listed materials combined with a material that is not listed to create a product with different properties than the individual materials. See Q#9 of the Federal Highway Administration's (FHWA) Q&As for Bipartisan Infrastructure Law – Build America, Buy America Act and the Implementation of OMB Final Guidance in 2 CFR Parts 184 and 200 for Federal Financial Assistance Programs (https://www.fhwa.dot.gov/construction/contracts/buyam_qa_baba_post10232023.cfm).

Under 2 CFR 184.4(e)(1), an article, material, or supply should be classified only into one of the following categories: (i) Iron and Steel products, (ii) manufactured products, (iii) construction materials, or (iv) section 70917(c) materials. Per 2 CFR 184.4(e)(2), classification must be based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project where the iron, steel, manufactured products, and construction materials will be incorporated.


One of the listed items under the definition of construction materials in 2 CFR 184.3 is: “plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables).” In the preamble to the 2 CFR 184 guidance, OMB stated that by a plastic and polymer-based product, it meant “a product comprised primarily of inputs of plastic and polymers, but which may also include some minor additions of other materials.” (88 FR at 57760) Polymer-based geosynthetic products that only have minor additions of other materials are properly classified as construction materials.

Part 184.6 established standards for each construction material to be considered “produced in the United States” and therefore compliant with the BABA Act. Per 2 CFR 184.6(a)(2), for plastic and polymer-based products to be produced in the United States, 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.

In addition, on October 25, 2023, OMB issued Memorandum M-24-02 titled “Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.” The memorandum provides supplemental implementation guidance on the application of a Buy America preference to Federal financial assistance programs for infrastructure.

Note that the State DOTs are responsible for BABA compliance. Under 23 CFR 635.410(d), States are to use standard State and Federal-aid contract procedures to ensure compliance with Buy America. State DOTs are encouraged to modify any applicable standard procedures and contract specifications to ensure compliance with the BABA requirement for construction materials. *See* Q#13 of FHWA’s Q&As (https://www.fhwa.dot.gov/construction/contracts/buyam_qa_baba_post10232023.cfm).

Sincerely,



Brian Hogge
Director, Office of Preconstruction, Construction,
and Pavements