

# FDOT's BABA Implementation Plan With Frequently Asked Questions

*As of April 12, 2024, with content from the Implementation Plan, Training Q&A, and other questions submitted to [Product.Evaluation@dot.state.fl.us](mailto:Product.Evaluation@dot.state.fl.us)  
Comments and suggestions are appreciated.*

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## **BABA Rules- Federal Links and Resources**

The Infrastructure Investment and Jobs Act (IIJA) was signed into law on November 15, 2021. The Build America Buy America Act (BABA), part of the Bipartisan Infrastructure Law, established a domestic content procurement preference for all Federal financial assistance obligated for infrastructure projects after May 14, 2022. For Federal Highway projects, implementation was delayed until November 14, 2022 (180 day waiver).

FDOT will comply with all applicable BABA and Federal Highway Administration (FHWA) rules. See details below for complete implementation plan dates. Contact the Product Evaluation Office if there is any concern with the applicability of the Federal Rules, as they must be understood in conjunction with FHWA's guidance and FDOT's implementation plan. Project specific exceptions must be approved by the State Construction Engineer.

*Disclaimer: The FDOT Implementation Plan is intended to support the Federal BABA Rules. All instructions in this document are intended to assist FDOT stakeholders with compliance with these rules. Please contact FDOT's [Product Evaluation](#) Office in the case of any perceived conflict or concern.*

**Federal Register- Implementation of the Infrastructure Investment and Jobs Act (IIJA)**  
<https://www.federalregister.gov/documents/2021/11/18/2021-25286/implementation-of-the-infrastructure-investment-and-jobs-act>

*This is the law signed by President Biden.*

**2 CFR 184 (Code of Federal Regulations):** <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-184?toc=1>

*This is the official Federal posting of the rule.*

**Guidance for Grants and Agreements, Office of Federal Financial Management, Office of Management and Budget (OMB):**

<https://www.federalregister.gov/documents/2023/08/23/2023-17724/guidance-for-grants-and-agreements>

*This is the official commentary and explanation, including interpretations, for 2 CFR 184. It is helpful to understand decisions and wording of the rule.*

**Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, Office of Management and Budget, October 25, 2023:** <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>

*From the M-24-02 memorandum, "This memorandum provides supplemental implementation guidance to Federal agencies on: (1) the application of a Buy America preference to Federal financial assistance programs for infrastructure... This memorandum rescinds and replaces Office of Management and Budget (OMB) Memorandum M-22-11."*

**FHWA IIJA Home page:** <https://www.fhwa.dot.gov/bipartisan-infrastructure-law/>

*This is FHWA's home page for IIJA/BABA. "This website will serve as your one-stop shop for FHWA's implementation of the Bipartisan Infrastructure Law, including everything from fact sheets and funding notices to guidance, regulations, and presentations."*

**23 CFR 635.410 Buy America requirements:** <https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-D/section-635.410>

*This is the official posting of the Buy America requirements for steel and iron materials, as well as manufactured products.*

**FDOT Standard Specifications Library** (Current Specifications book and approved revisions-Special Provisions and Supplemental Specifications):

<https://www.fdot.gov/programmanagement/implemented/specbooks/default.shtm>

*FDOT's ebook is effective for projects let July-June of the specified year. See the Specification Office's website for more information, including submissions for requested updates.*

**FDOT Approved Product List (APL) within the Product Application and Tracking History (PATH) Application:** <https://fdotwp1.dot.state.fl.us/ApprovedProductList/Specifications>

*Instructions for PATH/APL are available on the Product Evaluation website. **No login or password is required for public viewing.** Additional information is available below.*

**FDOT Materials Acceptance and Certification System (MAC):** Application home page & login <https://mac.fdot.gov/> , News and instructions: <https://www.fdot.gov/materials/mac/> , Reports: <https://mac.fdot.gov/smreports>

*The reports, news, and instructions links are helpful to any user. See instructions for access within the application.*

**FDOT Design Manual (FDM):** <https://www.fdot.gov/roadway/fdm>

*Instructions for development of construction plans, including Proprietary Product requests.*

**Local Programs Manual:** <https://www.fdot.gov/programmanagement/lap/lap-toc.shtm>

*Instructions for Local Agencies for compliance with State and Federal funding programs.*

**Florida Greenbook:** <https://www.fdot.gov/roadway/floridagreenbook/fgb.shtm>

*A manual intended for all Florida streets and highways not on the state and national highway systems, established by Florida Statutes and Rule 14-15.002.*

**FDOT Construction Project Administration Manual (CPAM):**

<https://www.fdot.gov/construction/manuals/cpam/cpammanual.shtm>

*Instructions to the Construction Engineer and/or Construction Engineering Inspector (CEI). This document assists the Engineer with enforcement of the contract documents, as well as any additional construction records or documents that must be maintained by the Engineer or Project Administrator.*

Questions	Answers
What percentage of FDOT projects are estimated to fall under the BABA	All Construction Projects. While all projects may not have FHWA funds, the State Project Number may have federal fund codes. Also, FDOT policy is to design according to FDOT Standards which are approved by

requirements over the next several years?	FHWA, so that projects remain eligible for Federal Funding if/when it becomes available.
Where are the BABA rules in the FDOT Specs?	<p>See the Specification Book, Section 6: Control of Materials. <b>Article 6-5</b> addresses Products and Source of Supply, with requirements to comply with IJJA and BABA.</p> <p>The 2023-2024 Specifications ebook is at:  <a href="https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/specbooks/fy-2023-24/fy2023-24ebook.pdf?sfvrsn=6b69416d_24">https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/specbooks/fy-2023-24/fy2023-24ebook.pdf?sfvrsn=6b69416d_24</a></p>
<p>Is PATH an interactive database or a static list?</p> <p>When must the product be listed?</p>	<p>PATH is a database. It keeps the tracking history for all product applications.</p> <p>Changes may occur daily, as manufacturers submit applications, update products or materials, and/or withdraw products.</p> <p>In accordance with the Standard Specifications, 6-1.3.1.1, products must be on the APL at time of use.</p>
How long does Product Evaluation take to review and list a product on the APL?	<p>Reviews vary based on the product type, BABA classification, and specification requirements. While BABA review may be completed within 24 hours, all products must still meet any applicable specification requirements; for some products this may take longer to complete.</p> <p><b>Products that are exempt from BABA domestic requirements</b> (MOT, Erosion, Aggregates &amp; Binders, and Manufactured Products): No further BABA documentation needed at this time. Products must still meet FDOT specification requirements.</p> <p><b>Products with BABA domestic requirements:</b> Manufacturer must submit compliance statement. This may be included with other documents submitted with APL application. Normal response from manufacturer is 1-3 days.</p> <p><b>Technical Expert</b> will verify that product meets specification requirements. Initial reviews vary from 1-30 days; depending upon specification section, additional testing may be necessary.</p> <p><b>Project Specific requests:</b> Reviews are normally completed within 1-3 days of submitted documentation. Incomplete documentation (missing specification, justification, and/or manufacturer’s information) may cause additional delays.</p>
What has 2 CFR 184 done to impact BABA?	2 CFR 184 is the legal posting of the Federal Rule. The recent changes have affected definitions and how products are

	classified. See the Q&A details for <a href="#">Definitions and Product Classifications</a> .
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**Definitions and Product Classifications**

**Temporary Items:** Per the BABA rule, the Buy America preference applies to “materials incorporated into infrastructure projects.” Temporary items (MOT, Temporary Erosion Control, and various tools) do not remain on the project, and are not subject to BABA rules. They have been marked as “Exempt from BABA” on the APL.

**70917(c) materials:** Cement and cementitious materials, aggregate and binding agents. This category applies to Concrete, Asphalt, and binders. They are exempt, per the BABA rule.

**Iron/Steel:** steel beams, most rebar, steel poles, steel pipe, etc. This category applies to products/materials that are wholly or predominately made of iron/steel. All manufacturing processes must occur in the United States. The FHWA definition for Iron and Steel is applicable.

**Construction Materials:** Non-Ferrous metals (Aluminum, copper, zinc, etc.), Plastic and polymer-based products, glass, fiber optic cable, lumber, etc.

This category applies to products that consist of predominately one material and other listed product types. All manufacturing processes must occur in the United States.

**Manufactured Products:** Articles, materials, or supplies that **do not** meet the above requirements. Products meeting the aggregate, Iron/Steel, or construction material definitions cannot be classified as Manufactured Products.

This category applies to most electronics, precast concrete products, and “products that are combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.”

**Unlisted Products:** Plants (trees, palms, shrubs, grass, and similar) have no listed BABA category. See the specifications and APL for FDOT requirements.

Questions	Answers
<b>General Classifications</b>	
My product is classified as a Construction Material, but I think it should be a Manufactured Product. What do I do?	Contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a>
How do I change my product’s BABA classification?	<b>Product types are classified based on BABA rules, the latest FHWA guidance, and FDOT specifications.</b> We will be happy to reconsider product classifications. Please send the product type, APL number (if available), and a brief explanation of the requested change. Ongoing reviews will be performed to update product classifications. Manufacturers will be notified of any changes affecting their product(s).

<p>Other states classify my product as _____. Can I change my product's BABA classification?</p>	
<p>How do coatings affect the product's BABA classification?</p>	<p>Guidance is available based on the material, coating, and how the product(s) arrive at the construction site. A brief summary is below.</p> <ul style="list-style-type: none"> <li>• Iron/Steel with coating during fabrication: Treat as Iron/Steel.</li> <li>• Non-Ferrous metals with coating during fabrication: Coatings are included with the manufacturing processes.</li> <li>• Field Coatings on metals: Most are considered separate products. Construction Material requirements may apply for Plastic and Polymer based coatings.</li> <li>• Concrete Coatings: Most are considered separate products. Construction Material requirements may apply for Plastic and Polymer based coatings.</li> <li>• Sealants and/or surface preparation materials may be incidental to the related material being applied.</li> </ul> <p>See the APL or contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a> for specific situations.</p>
<p>Why is product type _____ classified as _____?</p>	<p>Product Type classifications are based on BABA rules and FDOT specifications. Product specific questions may be sent to <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a></p>
<p>Can you please develop further on what we can consider as a manufactured product vs. a Construction Material?</p>	<p>After checking for Temporary Products and Iron/Steel, the Construction Material is the next "check". If it is made of plastic/polymers, non-ferrous metals (aluminum and other), lumber, etc., then it is a Construction Material. After construction materials, it may be classified as a manufactured product. There are 80+ pages of guidance that have details regarding this response. Best answer: See the APL for FDOT's classification.</p>
<p>Some products state "Domestic" or have an image stating "Made in the USA". Is that acceptable to meet the BABA requirements?</p> <p>Is a letter from the manufacturer required stating BABA requirements are met?</p>	<p>No. BABA definitions do not recognize any of these statements as self certification.</p> <p>Depending on the BABA classification (Construction Material, Manufactured Product, Section 70917(c) material, or other), different BABA rules and documentation requirements may apply.</p> <p>A letter from the manufacturer is acceptable, when submitted to Product Evaluation; field certifications for BABA compliance will not be accepted for non-steel items.</p> <p>See the APL for listed product types.</p>

	Contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a> to determine which documentation is needed for listing additional products on the APL.
<b>Temporary Items</b>	
If the item will eventually be removed (tree bracing, barriers, etc.), is it considered temporary?	If the product is removed prior to acceptance of the project, then it is temporary. Anything that remains at the time of acceptance must be classified according to BABA rules.
Are “non-fixed items” or “not permanently incorporated items” considered Temporary?	<p>Temporary items are generally used to assist with the construction activities and removed when construction (item, phase, or project) is complete. They are exempt from BABA rules, but may be subject to other specification requirements including MUTCD compliance, Standard Plans, and/or APL listing.</p> <p>Non-fixed items (fire extinguishers, defibrillators, first aid kits, chairs, desks, etc.) are not normally included in a construction contract, per the FHWA stewardship agreement. If approved by FHWA to be included on a construction contract, they are exempt from BABA rules, because they are not permanently affixed to the infrastructure.</p> <p>Items affixed or attached may include sinks, toilets, hand dryers, trash receptacles, fire hydrants, fire suppression systems, and flag poles; they are permanent items subject to BABA rules.</p> <p>Portable generators (not fixed location) are temporary and not included in construction contracts; permanent generators (fixed location, permanently installed) are subject to BABA rules.</p> <p>Similarly, spare parts are not included in the construction contract, as they are not incorporated into the specified project.</p> <p>Contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a> to determine if products need to be added to the APL.</p>
<b>Aggregates/70917(c) materials</b>	
Are all concrete and asphalt materials exempt?	<p>Concrete and asphalt (loose aggregate) are exempt from BABA rules as “Section 70917(c) materials: Aggregates and Binders”.</p> <p>Concrete and asphalt materials must still comply with all other FDOT specification requirements.</p>

	<p>Precast items are not considered 70917(c) materials.</p> <p>See specific product types for grouts, fillers, admixtures, etc.</p>
<b>Iron and Steel</b>	
<p>If a crash cushion made of predominately iron or steel is BABA compliant, would fasteners (nuts and bolts) also need to be BABA compliant?</p> <p>Can you please provide links to acceptance requirements for iron and steel?</p>	<p>Per the <a href="#">Specifications</a>, “<b>6-5.2.1 Steel and Iron:</b> Use steel and iron manufactured in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States.”</p> <p>“Foreign steel and iron may be used when the total actual cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater.”</p> <p>See the <a href="#">CPAM</a> for additional information.</p> <p>See the specification for additional details and documentation of the foreign steel. Contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a> for specific situations.</p>
<p>Currently there are products that have steel and iron, as well as electronics. How would this be classified?</p>	<p>Per the BABA rules and the FHWA waiver, products with Iron and Steel would be classified as Iron and Steel. There may be exceptions for miscellaneous hardware.</p> <p>See the APL for product classification. Contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a> for specific situations.</p>
<b>Construction Materials</b>	
<p>Various state DOTs are characterizing hot-applied and preformed thermoplastic pavement markings differently. How is FDOT categorizing them?</p>	<p>FDOT currently has them labeled as Construction Materials (Plastics/Polymers), due to the BABA definitions and materials required in FDOT Specifications.</p> <p>Ongoing discussions with FHWA may change the categorization of some products.</p> <p>Glass beads with coatings are currently classified as Manufactured Products, when applied separately. See the APL for product classifications.</p>
<p>Are plastics/rubber, such as polyethylene water services, required to be BABA compliant?</p>	<p>Plastics and polymers are considered Construction Materials, subject to BABA rules. Rubber products may need further review to determine if they are "natural rubber" or synthetic rubber with polymers.</p>
<b>Manufactured Products</b>	



<p>Are Manufactured Products exempt from BABA? Don't they have to have 55% of materials from the USA and be manufactured domestically?</p>	<p>Under the FHWA waiver, Manufactured Products are currently exempt. FHWA is reviewing this waiver; Product Evaluation will continue to coordinate with FHWA as needed.</p> <p>Projects with Federal Funds NOT from FHWA will be required to meet the 55% requirement for Manufactured Products in the BABA rules under 2 CFR 184, unless the Federal Agency with the majority Federal Funds has an applicable waiver.</p>
<p>Would glass beads for retro-reflectivity on painted lines be considered construction material?</p>	<p>The FDOT specifications are important to the classification. <b>971-2.2 Specific Properties:</b> <i>The large (Type 3 or larger) glass spheres used for drop on beads shall have an adhesion coating. Type 1 glass spheres used for drop on beads shall have a dual coating.</i></p> <p>While coatings on many products do not change the BABA classification, the required coating on glass spheres is a secondary process that changes the performance properties. Due to the specification requirements, this product type has been classified as a Manufactured Product.</p>
<p>Are Manufactured goods, like Electronic signs, exempt?</p> <p>Are luminaires classified as Manufactured Products?</p>	<p>At this time, FHWA's waiver exempts manufactured products, including electronics. Products with electronic components are currently classified as Manufactured Products.</p> <p>For projects with other Federal Funds, the funding levels must be identified to determine which Federal agency's rules and/or waivers apply.</p>
<p>Are precast concrete blocks exempt?</p>	<p>"Wet concrete" arriving at the construction site is exempt as an aggregate/binder, under 70917(c).</p> <p>Precast products are considered manufactured products, currently exempt under FHWA's waiver. Refer to the M-24-02 memo for additional information.</p> <p>See the specifications for additional requirements, including approved fabricator for some products.</p> <p>Reinforcing steel must still comply with Buy American steel requirements.</p>
<p>Are signal and ITS components part of BABA compliance?</p>	<p>All products that are incorporated into the project are subject to some level of BABA requirements.</p> <p>The signals and ITS components (electronics) are generally classified as Manufactured Products- exempt with FHWA waiver.</p>

	Products/components that arrive separately, i.e. signal heads, wires, poles, pull boxes, are ALL separate products and will be evaluated separately.
<b>Unlisted/Other Products</b>	
Are plants and landscaping materials required to be BABA compliant?	<p>Plants are not listed as construction materials nor subject to manufactured products requirements.</p> <p>Landscaping materials, including various types of mulch, may be subject to BABA rules, if they include any of the listed construction materials. See the APL for listed product types.</p> <p>Irrigation materials are subject to BABA rules. See the APL for listed product types. Contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a> for unlisted product types.</p>
<b>Systems and Kits</b>	
Should my product be classified as a manufactured product? It contains multiple pieces/materials.	<p>Contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a></p> <p><b>Product types are classified based on BABA rules, the latest FHWA guidance, and FDOT specifications.</b></p> <p>Per BABA rules, minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material. See the FDOT specifications for included separate components or incidentals.</p>
My product comes with additional items for assembly. Is it a manufactured product?	<p>See the FDOT specifications. If the product is required to include specific “pieces”, it may be classified as a manufactured product.</p> <p>If the product is sold with additional pieces/parts to assist the contractor with installation, but is not required per the specifications, then the product’s classification will remain in accordance with the Specs. See the product’s listing on the APL for additional comments or limitations.</p>
Am I required to use manufacturer recommended pieces/parts or tools?	<p>Yes. The specifications normally require installation in accordance with the manufacturer’s installation instructions. Compliance with these instructions is necessary to ensure applicable warranties.</p>
Is a wall system, per Section 548, exempt as concrete & binders.	<p>The wall has multiple products, per the specifications:</p> <ul style="list-style-type: none"> <li>• The APL has approved the manufacturer’s wall design, not the individual materials.</li> <li>• Precast concrete, including reinforcements and any attachments from the producer: Manufactured Product. Approved Producer rules may apply.</li> </ul>

	<ul style="list-style-type: none"><li>• Metal Reinforcement (mesh or strips) and attachment devices provided in the field by the manufacturer: See the product details. Field certificate must be provided for Iron/Steel, unless otherwise noted on the APL.</li><li>• Geotextiles: Must be on the APL under Section 985.</li></ul>
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## Effective Dates

**Authorization Date of funds:** The federal rules use the Authorization date, rather than the contract’s letting date.

- Funds authorized on/after October 23, 2023 are subject to 2 CFR 184 and M-24-02 BABA rules. For FDOT, this includes new projects let January 2024 and later.
- Projects let between May 2022 and December 2023 are still covered by Federal Rules under Office of Management and Budget’s M-22-11, but existing waivers exempted many product types.
- **Local Agency Projects with Federal Funds other than FHWA** must continue to comply with all rules (2 CFR 184, M-22-11, and the new M-24-02, based on letting date), along with any waivers from the Federal Agency providing the majority of Federal Funds. Verify implementation dates for the applicable Federal Agency and any applicable waivers.

Questions	Answers
<p>Is it correct that the latest BABA requirements should not be in effect until January 2024 Lettings?</p>	<p><b>Projects let 1983 and later:</b> FHWA Buy America iron/steel requirements are in effect.</p> <p><b>Project let May 2022-December 2023:</b> BABA rules with M-22-11 are in effect.</p> <ul style="list-style-type: none"> <li>• Aggregates and Temporary Products are exempt.</li> <li>• Many APL products and materials were considered exempt under FHWA’s Manufactured Products waiver.</li> <li>• Buy America steel requirements remain in effect.</li> </ul> <p><b>Projects let January 2024 and later:</b> August 23, 2023 updated BABA guidance and definitions changed many products from “Manufactured Products” to “Construction Materials”.</p> <ul style="list-style-type: none"> <li>• Aggregates and Temporary Products remain exempt.</li> <li>• <b>Construction Materials</b> identified- new rules apply.</li> <li>• <b>Manufactured Products</b> (excluding those that were reclassified as Construction Materials) are still exempt under FHWA’s Manufactured Products waiver.</li> <li>• <b>Buy America steel</b> requirements remain in effect.</li> </ul> <p>BABA rules are based on the authorization date of Federal Funds. FDOT has identified January 2024 Lettings as the applicable lettings following the October 23, 2023 authorization date.</p>
<p>What are the Effective Dates for Local Agency projects?</p>	<p>The answer depends on which Federal Agency is providing the majority of Federal Funds and/or whether it is being let with an FDOT Construction Project.</p> <ul style="list-style-type: none"> <li>• If the project is being let with an FDOT project with <b>FHWA funds</b>, follow the normal FDOT instructions.</li> </ul>

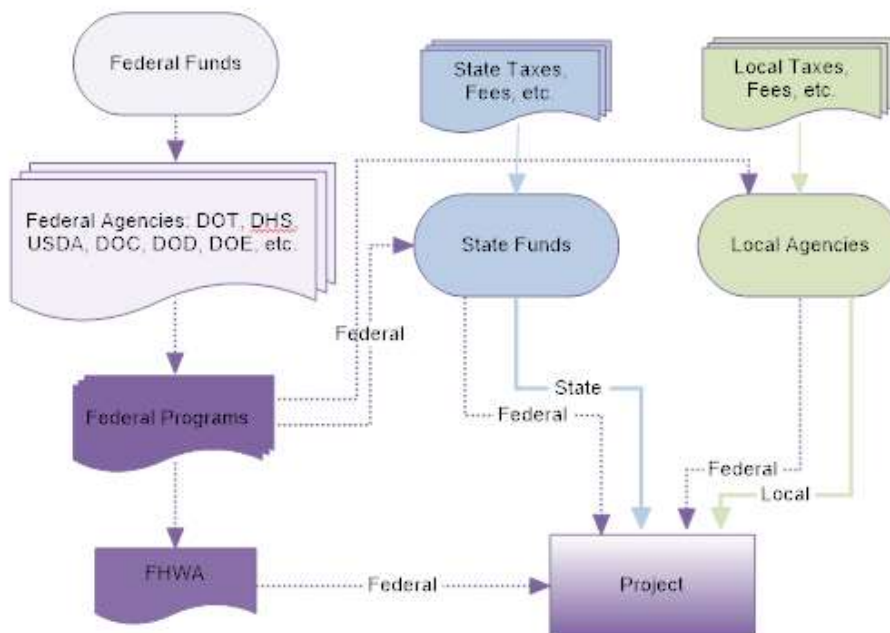
	<ul style="list-style-type: none"><li>• If the project is being let without FHWA funds, but has <b>Federal Funds from another agency</b>, the entire contract may be subject to the other agency's rules.</li></ul>

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## Federal Funding: FHWA and Other Federal Agencies

**Fund Types:** Most FDOT projects have a State Project Number (example 123456-1-52-01), with an additional Federal Project Number when FHWA funds are applicable. While the presence of a Federal Project Number is an obvious indicator of Federal Funds, the State Project Number may have multiple fund codes from State and Federal sources. **All construction projects must follow BABA rules**, unless otherwise approved by the State Construction Engineer, after verifying all applicable fund codes. Approved exceptions will be documented by Product Evaluation, so that waivers may be requested.

The graphic below shows how Federal Funds may be “hidden” within a State Product Number.



### Examples of Funds from other Federal Agencies:

Department of Homeland Security (DHS): Transportation related Cybersecurity

Federal Emergency Management Agency (FEMA): Hurricane and storm relief

Department of Agriculture (USDA): Landscape, Forest Restoration

Department of Transportation (USDOT): Safety, Safe Paths to School, Rail Programs, Mass Transit

Housing & Urban Development (HUD): Local Programs and community development

Homeland Security: Local Programs

Environmental Protection Agency (EPA): ponds, drainage, wetlands

**Local Agencies:** Representatives from Local Agencies are encouraged to notify Designers when Federal Funds are included in local partnerships, so that applicable BABA rules and/or waivers

may be considered. Depending on funding levels, the entire contract may be impacted by funds from other sources.

Questions	Answers
<p>Do FHWA rules apply to Local Agency projects?</p>	<p>The Federal Agency with the highest funding level will determine the applicable rules &amp; waivers. For most FDOT projects, this will be FHWA.</p> <p>For FDOT projects without FHWA funds, Federal Funds (through State and Local project numbers/fund codes) may still be present or added later.</p> <p><b>General guidance:</b> All Construction Projects must comply with BABA and FHWA rules.</p> <p>See <a href="#">Specifications</a> Section 6 of and <a href="#">FDM</a> Chapter 110.</p>
<p>My project doesn't have Federal Funds. Do I have to comply with BABA rules?</p> <p>My project is District Let without Federal Funds. Do I have to comply with BABA rules?</p>	<p>The absence of a Federal Project Number (FHWA funding) does not indicate the fund codes within the state project number; Federal Fund codes from non-FHWA sources may still be present. Requests to remove BABA requirements from the project must be approved by the State Construction Engineer and require an Modified Special Provision (MSP) to remove Section 6 specification requirements.</p> <p><b>FDOT Policy:</b> All projects are designed to meet FHWA rules, so that Federal Funds may be applied, if available at a later date through Design and/or Construction phases.</p> <p><b>FDOT guidance:</b> Exceptions to BABA rules will only be considered when alternative designs or products are unavailable. Contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a> or the State Construction Engineer.</p>
<p>Does the FDOT BABA classification still apply for projects with Federal Funds from other agencies?</p>	<p>If your project has Federal Funds from other agencies (non-FHWA funds), it may be subject to BABA rules, waivers, and audits from that agency.</p> <p><a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a> will be happy to assist with identifying applicable BABA rules and waivers.</p> <p>Products on the APL have not been evaluated for use on projects with other Federal funds/waivers.</p>
<p>What does "eligible" mean?</p>	<p>“Eligible” is the term used to indicate that Federal Highway Funds may be used for the product or material. There are many associated rules through FHWA and FDOT agreements that</p>

	<p>may apply, but this is a simple check to determine if the product meets applicable BABA domestic requirements.</p> <p>Products on the APL have not been evaluated for use on projects with other Federal funds/waivers.</p> <p>When used to document materials acceptance for FDOT projects, the <a href="#">MAC</a> system will verify eligibility with FHWA funds.</p>
<p>What if a project is state funded but has ARPA funds?</p> <p>Will BABA apply to new ARPA funding or retroactive to ARPA funding already obtained?</p> <p>What if a project has FEMA funding?</p>	<p>ARPA: The American Rescue Plan for state and local governments to recover from the economic effects caused by the COVID-19 pandemic.</p> <p>This is an example of different rules for different Federal Funding sources.</p> <p>Contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a></p>
<p>If there are two projects that let together, one is federally funded and the other is state funded, would the state funding project be held to the BABA Requirements?</p>	<p>Yes. Under current rules, <b>all projects</b> let under the one contract become <b>“federalized”</b> if there are <b>any Federal Funds</b> present on any project.</p> <p><b>Alternative funding for specific products cannot be used to circumvent BABA rules</b>, per the IIJA Federal law.</p>

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**Waivers**

All waivers are intended to consider the national impact/availability, not short term or specific project preferences. See the [CPAM](#) for Instructions applicable to Iron and Steel. All other waiver requests must be coordinated with the State Construction Engineer and Product Evaluation Administrator.

**Steel and Iron:** Buy America provisions of 23 CFR 635.410, the amount of foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater.



**Construction Materials:** Per the FHWA Waiver of Buy America Requirements for **De Minimis Costs** and Small Grants, the total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project; or

The total amount of Federal financial assistance applied to the project, through awards or subawards, is below \$500,000.

“Total applicable project costs” are defined as the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement, including materials that are within the scope of an existing waiver.

**The De Minimis waiver is not available for most FDOT Construction contracts,** as the “Fraction of Material Costs alone (no installation or equipment costs)” is not available to be calculated or documented. There is no current FDOT accounting method available. Material Cost Data is not collected from Contractors.

The De Minimis waiver may apply to Local Agency contracts meeting the above criteria. Contact the State Construction Engineer or the State Product Evaluation Administrator for further information.

**Manufactured Products Waivers:** FHWA has an existing waiver for Manufactured Products; it is currently in effect, but under review. Product Evaluation will continue to work with Manufacturers to identify which products may be affected if/when FHWA rescinds this waiver. Manufacturers will be encouraged to submit an updated Product Detail Form, along with an APL application or Product Change application.

**BABA Waivers:** Federal Agencies may issue waivers through the Federal Made in America Office, based on public interest, non-availability, or unreasonable cost, as documented in the BABA rules.

Contact [Product.Evaluation@dot.state.fl.us](mailto:Product.Evaluation@dot.state.fl.us) if your project includes funding from other Federal funding sources greater than FHWA funding sources.

Questions	Answers
I am a Designer. A Product/Material is not BABA compliant. What should I do?	<p>The following steps should be considered in order:</p> <ol style="list-style-type: none"> <li>1. <b>Consider alternative products or materials.</b> Identify other materials or producers. Example: Alternative materials for a light pole.</li> <li>2. <b>Consider alternative designs.</b> If a non-compliant material is requested to be compatible with an existing condition, re-design the surrounding conditions to work with a compliant material. Example: Alternative design to work with a domestic pump or generator.</li> <li>3. Verify all funding sources for the State Project number(s). An exception may be approved if NO Federal Funds are present. This step should not be used if compliant products are available. Update specifications and/or APL#, as applicable.</li> </ol>

	<p>4. If Federal Funds are present from any source, consider alternative funding for the entire Contract; line item funding is not an option to avoid BABA rules.</p> <p><b>Alternative products or designs must be considered before funding options.</b></p>
I am a Manufacturer. My product is not BABA compliant. What should I do?	<p>Your project may still be eligible for non-Federally funded projects.</p> <p>See the specifications. Contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a> for additional information.</p>
Are waivers being prepared by the manufacturers who don't comply with BABA and processed by CO at the APL level?	<p>No. Federal Waivers are intended to consider the national impact/availability, not short term or specific project preferences. See 2 CFR 184 for more information on waivers.</p> <p>Manufacturers may work directly with FHWA or other Federal Agencies for national and/or industry waivers.</p> <p>See above for project specific needs or requested exceptions.</p> <p>Long delivery times (months and/or years) are not considered sufficient justification for federal waivers, per current FHWA guidance.</p>
Is the "COST" of iron and steel the cost the manufacturer paid (their cost)? Or is the cost the "Retail/bid" price it was sold to FDOT?	<p>It is the invoice cost that the Contractor paid.</p> <p>Per the specification, 6-5.2.1 Steel and Iron, "...submit invoices to document the actual cost of such material, and obtain the Engineer's written approval prior to incorporating the material into the project."</p>
Will FDOT recognize the new FHWA de minimis/small grant waiver across the board (not just for iron and steel)?	<p>No for FDOT Construction contracts. FDOT does not have a method to track the material costs (not the bid cost with labor, equipment, and other costs), per the waiver's requirements.</p> <p>Most FDOT construction contracts do not qualify for the small grant waiver.</p>
What is FDOT's plan if FHWA does not extend the manufactured products waiver?	<p>FDOT will comply with any updated rules or guidance from FHWA.</p> <p>Product Evaluation has additional database fields available to assist with easily identifying various types of products currently covered under the Manufactured Products waiver.</p>
We understand the waivers are then generic and not Project-Specific, is this correct?	<p>FDOT will determine which waivers may be used. See Section 6 of the Specifications for details.</p> <p>The <b>Iron &amp; Steel waiver</b> is calculated for the project; it may be used today for incidental items. Consult the CPAM for details.</p>

	<p>The current <b>Manufactured Products waiver</b> is fairly generic; it used by Product Evaluation to assign BABA eligibility on the APL in accordance with the specifications. It is under review by FHWA for possible future changes.</p> <p>The <b>De Minimis waiver for Construction Materials</b> is NOT USED by FDOT, due to the documentation rules; it was not intended for "easy use".</p>
Does the Manufactured Products Waiver have an expiration date or it applies unless there is a subsequent change by FHWA?	<p>The FHWA waiver is in effect until it is revoked or superseded by FHWA. It is currently under review. We do not have any draft or known changes at this time.</p> <p>We anticipate that additional guidance will be available in the next 6-12 months. It will be posted in the Federal Register. Normally, requirements are not retroactive to previously let contracts. See the FHWA website for details.  <a href="https://highways.dot.gov/">https://highways.dot.gov/</a></p>
Can I use the De Minimis waiver for small projects?	<p><a href="https://www.govinfo.gov/content/pkg/FR-2023-08-16/pdf/2023-17602.pdf">https://www.govinfo.gov/content/pkg/FR-2023-08-16/pdf/2023-17602.pdf</a></p> <p>FDOT projects: No. See above guidance.</p> <p>Local agencies: For contracts less than \$500,000 the local agency may want to review the waiver details.</p>

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**FDOT Implementation Plan**

- [Plan Overview & APL Guidance](#)
- [Instructions for Designers and Reviewers](#)
- [Instructions for Construction Engineers and Inspectors](#)
- [Instructions for Contractors](#)
- [Instructions for Approved Producers and Manufacturers](#)
- [Instructions for Local Agencies](#)
- [Instructions for Utilities](#)

**Plan Overview & APL Guidance**

All products and materials permanently incorporated into the project are subject to BABA rules. Temporary products (Maintenance of Traffic, Temporary Erosion Control, and similar tools or equipment) are exempt, per BABA rules.

Due to the large number of manufacturers, suppliers, and fabricators for FDOT projects, the Department is making every effort to minimize project level certifications, in favor of collecting repetitive documentation once per product - from the source of material or product. This will be accomplished through FDOT's Approved Product List ([APL](#)) and the Materials Acceptance and Certification system ([MAC](#)).

In order to minimize the administrative impact to Construction staff, Product Evaluation will collect BABA documentation through the APL system, along with any other reports or documentation from the manufacturer that is identified in the specifications. Project specific certifications, such as lot test reports or "meets specification/material properties" will continue to be required, per the applicable specifications. Changes will be ongoing, as the Department updates applicable specifications, the APL, and [MAC](#). General guidance is as follows:

**Iron and Steel:** No changes from existing "Buy America" rules for most products.

- For products with an APL product type, the Engineer\* will record the APL number in [MAC](#). Documentation per the specifications and [CPAM](#) will be collected, and foreign steel will be recorded in AASHTOWare Project Construction (PrC).
- For products without an APL product type, the Engineer will collect documentation per the specifications and [CPAM](#), and foreign steel will be recorded in AASHTOWare Project Construction (PrC).

Per FHWA, "The de minimis threshold in 23 CFR 635.410(b)(4) continues to apply for steel and iron." <https://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

*When steel and iron materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater.*

**Construction Materials:** Product Types will be added to the APL, starting with common items (high unit cost and/or large quantity).

- For products with an APL product type, the Engineer will record the APL number in [MAC](#). BABA certification & eligibility will be stored within the APL system. Some APL products also may require field verification and/or certificates for Material Acceptance or Installation compliance. No further "BABA compliance" documentation is required in the field.
- For products without an APL product type, contact Product Evaluation.
- For products required to use approved fabricators, see above.

**70917(c) materials:** No new BABA requirements; these materials are currently exempt from BABA requirements.

- For products with an APL product type, the Engineer will record the APL number in [MAC](#). BABA compliance will be noted on the APL. Some APL products may require field verification and/or certificates for Material Acceptance or Installation compliance. No further "BABA compliance" documentation is required in the field.

- For products without an APL product type, the Engineer will continue to enforce the existing specification requirements. No BABA certification is required at this time.

**Manufactured Products:**

- For products with an APL product type, the Engineer will record the APL number in MAC. BABA compliance will be noted on the APL. Some APL products may require field verification and/or certificates for Material Acceptance or Installation compliance. No further “BABA compliance” documentation is required in the field.
- For products without an APL product type, the Engineer will continue to enforce the existing specification requirements. No BABA certification is required at this time.

*\*All references to “the Engineer” are as defined in Section 1 of the specifications: “The Director, Office of Construction, acting directly or through duly authorized representatives; such representatives acting within the scope of the duties and authority assigned to them.”*

Product Evaluation will be coordinating with Manufacturers, Suppliers, Fabricators/Producers, as well as Designers and Contractors. By ensuring that BABA compliance is documented through the APL and MAC, the Department will be able to show compliance with the Federal rules and regulations. **Failure to document products installed on the project could result in loss of federal funds (FHWA and other Federal Funds) for the entire contract.**

The FHWA De Minimis waiver, and other Federal Agency waivers, may only be approved for use by the FDOT Secretary. All requests for these waivers must be coordinated with the State Construction Engineer. Additional domestic compliance documentation for all materials will be required.

Questions	Answers
An item is not on the APL. How is BABA applicability confirmed?	Contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a>  Products will be added to the APL as they are identified. Standard Products (in the spec book) will be added and BABA compliance verified as quickly as possible.  Project Specific, Non-standard, and Sole Source products will be added as they are identified/requested during the design phase.  <b>Engineers/CEI or Contractor may NOT determine BABA eligibility in the field.</b> BABA certifications must be submitted through Product Evaluation.
Are there currently any APL product types that do not	BABA eligibility is being confirmed with manufacturers at this time. Updated information will be shown on the APL as it is confirmed.

<p>have BABA eligible products?</p>	<p>Contact Product Evaluation to add additional products (brand, model) to the APL.</p> <p>As the FDOT specifications, BABA guidance, and FHWA waivers are reviewed, some products may change category and/or status. Any impact to FDOT projects will be coordinated with the Design and/or Construction Office.</p>						
<p>Will the BABA status be added to the APL or the specification?</p>	<p>The APL will show the BABA status and product classification (Construction Material, Manufactured Product, etc.)</p> <p>Additional product types (groups) and products (brands, models) will be added to the APL as they are identified.</p>						
<p>How do I refer to a proprietary product in the specifications?</p>	<p>After submittal and approval of the Proprietary Product Form, per <a href="#">FDM</a> Chapters 103 and 110, update the contract documents.</p> <p>Contact your FDOT District Specifications Office for guidance on processing the MSP.</p> <p>The MSP should update existing language from “use any APL product”, to include the Product Name (as listed on the APL), APL#, and the applicable locations. For example:</p> <table border="1" data-bbox="597 1035 1417 1150"> <thead> <tr> <th>Product</th> <th>APL#</th> <th>Location</th> </tr> </thead> <tbody> <tr> <td>Bosch VG5-ITS1080P-30X6</td> <td>682-002-019</td> <td>Locations shown in the Plans.</td> </tr> </tbody> </table> <p>Use the APL product name. Specific models or additional components may only be included when listed within the product’s APL details.</p> <p>Additional components that arrive separately may require a separate APL product type listing.</p>	Product	APL#	Location	Bosch VG5-ITS1080P-30X6	682-002-019	Locations shown in the Plans.
Product	APL#	Location					
Bosch VG5-ITS1080P-30X6	682-002-019	Locations shown in the Plans.					
<p>Can I use a plan note to refer to the Proprietary Product?</p>	<p>Per FDM 914.2, “notes are not a substitute for specifications. Product and material requirements must be included in the applicable specifications. Refer to the Specifications Handbook for guidance.”</p> <p>Do not use a note to restrict to Product A, when the spec allows the contractor to “use products on the APL.”</p> <p>See FDM 110 for additional instructions.</p>						

**Instructions For Designers**

While the Engineer and Construction Engineering Inspectors (CEIs) have the responsibility of recording applicable APL numbers, the Designer\* must meet the following:

- For products and materials used in accordance with the Standard Specifications, no further action from the Designer is necessary. Product Types requiring BABA compliance will be shown on the APL.
- For APL products used with Sole Source/Proprietary Product approval, including those on the APL, ensure that the product is BABA eligible. Remember to update the Contract Documents (specifications) with the named product.
- For non-standard products and materials, continue to follow applicable [FDM](#), Chapter 110 requirements for sole source/proprietary products, as well as the following:
  - For Temporary Products (not incorporated or remaining on the project), no further action is needed for BABA.
  - For 70917(c) materials (aggregates, concrete, asphalt), no further action is needed for BABA.
  - For all other non-standard products and materials, contact Product Evaluation to determine BABA compliance. Non-standard products will be added to the APL as domestic compliance is confirmed. Send the following information to [Product.Evaluation@dot.state.fl.us](mailto:Product.Evaluation@dot.state.fl.us) :
    - FDOT Project number
    - Applicable specification section number
    - Product name and/or model number
    - Technical Data Sheet or other details showing materials, if available
    - Manufacturer and website, if available

By adding non-standard products to the APL, BABA compliance documentation will be available to Contractors and the CEI, so that construction delays may be avoided.

*\*\* All references to “the Designer” are directed to the Engineer of Record as defined in Section 1 of the specifications, as well as reviewers and other FDOT design staff preparing projects for bidding.*

Questions	Answers
How can we "check with construction" during design?	<p>Designers prevent later construction issues by verifying products are on the APL prior to including them in the Contract/Bid documents (plans, specs, or estimate summary).</p> <p>As noted above, Designers should contact Product Evaluation for any non-standard products that need to be added to the APL.</p>
Alternatively to an MSP, can pay item notes be specified for each proprietary product to be used?	<p>Per the <a href="#">FDM</a>, pay items notes are not a substitute for specifications.</p> <p>If the product is not already on the APL, it will need to be added, so that tracking in <a href="#">MAC</a> can be used by Construction.</p> <p>When referring to an APL product, the APL# should be included. See the <a href="#">APL guidance</a> for additional information.</p>
The product(s) will not be determined until shop drawings are completed.	While specific size or product models may not be listed on the APL, the Designer should ensure that the Product Type is shown, with at least one eligible product, or instructions for submitting additional products.

How do I ensure BABA compliance?	Section 5 of the Specifications (pending modification) will require that products considered through the Shop Drawing review process be listed on the APL.
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**Instructions For Construction Engineers And Construction Engineering Inspectors (CEIs)**

Ensure that all products requiring listing on the APL have an “eligible” status, and that the APL number is recorded in the [MAC](#) system. For products that are not on the APL, contact [Product.Evaluation@dot.state.fl.us](mailto:Product.Evaluation@dot.state.fl.us) with the product name/model number, manufacturer, and applicable specification section. Products will be added to the APL as domestic compliance is confirmed. Ensure that all other acceptance requirements, in addition to BABA compliance, are met.

For supplemental agreements or work orders for construction push button contracts, see the [Instructions for Designers](#). Follow the instructions for non-standard products, so that an APL number can be assigned for tracking in [MAC](#).

For non-standard products accepted at the project, ensure that the non-standard product is listed on the APL. See the [Instructions for Designers](#) for adding non-standard products to the APL.

<b>Questions</b>	<b>Answers</b>
If the products are entered as samples in <a href="#">MAC</a> for APL/BABA samples, are we still required to get certifications from manufacturers stating they are Buy America compliant, or is that covered by the APL entry?	<p>No. The BABA eligibility/compliance will be shown on the APL. Documentation will be collected ONCE from the manufacturer by Product Evaluation when the product is listed.</p> <p>The Engineer/CEI will need to enter the sample with the APL number. No separate Buy America/BABA certifications will be collected in the field. MAC will verify the APL BABA eligibility and alert the CEI of non-domestic status.</p> <p>Any other certifications, per the specifications, will continue to be collected, i.e. Iron/Steel certification.</p>
What type of certification do I need to collect from the Contractor?	<ul style="list-style-type: none"> <li>• No changes to Iron/Steel certification requirements. Continue to collect the documentation, per the <a href="#">CPAM</a>.</li> <li>• For all other products, see the APL. BABA compliance documentation is collected by Product Evaluation and noted on the APL. Do NOT collect BABA certifications in the field.</li> <li>• Other types of certifications in the specifications (equipment, quantity, installation, etc.) should be collected per the specs.</li> </ul> <p>See the <a href="#">plan overview</a> for additional information.</p>



## Instructions For Contractors

While the Engineer and Construction Engineering Inspectors (CEIs) have the responsibility of recording applicable APL numbers, Designers have been directed to meet the following:

- For products and materials used in accordance with the Standard Specifications, no further action from the Designer is necessary. Product Types requiring BABA compliance will be shown on the APL.
- For APL products used with Sole Source/Proprietary Product approval, ensure that the product is BABA eligible.
- For non-standard products and materials, continue to follow applicable [FDM](#) requirements, as well as the following:
  - For Temporary Products (not incorporated or remaining on the project), no further action is needed.
  - For 70917(c) materials (aggregates, concrete, asphalt), no further action is needed.
  - For all other non-standard products and materials, contact Product Evaluation to determine BABA compliance. Non-standard products will be added to the APL as domestic compliance is confirmed. Send the following information to [Product.Evaluation@dot.state.fl.us](mailto:Product.Evaluation@dot.state.fl.us) :
    - FDOT Project number
    - Applicable specification section number
    - Product name and/or model number
    - Technical Data Sheet or other details showing materials, if available
    - Manufacturer and website, if available

By adding non-standard products to the APL, BABA compliance documentation will be available to Contractors and the CEI, so that construction delays may be avoided.

Similar to the Designer’s instructions above, Contractors are invited to submit names of products, suppliers/fabricators, and manufacturers not currently listed on the APL. Product Evaluation will reach out to verify BABA compliance, and/or invite the manufacturer to submit an APL application.

Questions	Answers
<p>Will items on the APL List still need to be on the Contractor QC Plan? An example is the Bridge Bearings.</p>	<p>See Section 105 of the specifications for details. QC Plans ensure that products are obtained from a FDOT Approved Producer/Fabricator.</p> <p>Product Evaluation will work with the State Materials Office and Technical Experts for all Specification Sections.</p> <ul style="list-style-type: none"> <li>• For products that can be completely reviewed through manufacturer supplied documentation (reports, drawings, etc.), the APL will be used for full acceptance.</li> <li>• For products that need field reviews and/or lot specific samples in addition to manufacturer supplied documentation, the APL product will have a comment</li> </ul>

	<p>or limitation applied to note the BABA eligibility. Field acceptance, per the specification will continue to be used.</p> <p><b>See the APL for approval or limitations on specific product types.</b> Updates to Specifications will follow normal review procedures.</p>
<p>Is it the Designer's responsibility to specify products that are BABA compliant or seek the necessary waivers?</p>	<p>Yes. The Designer should address all BABA concerns during design, so that the Contractor and CEI do not encounter any ineligible products.</p> <p>See the <a href="#">waiver</a> section of this document for additional details.</p>
<p>From a Contractor perspective, should we incorporate in our agreements with suppliers/subcontractors for them to acknowledge compliance with BABA on Projects let after Jan 2024?</p>	<p>BABA compliance will not be determined/accepted in the field. See the <a href="#">FDOT Implementation Plan</a> overview.</p> <p>Compliance statements must be through Product Evaluation, with listing on the APL. We have been working with manufacturers to obtain their BABA documents. We welcome product recommendations from Contractors, subcontractors, and suppliers: please send us contact information for the manufacturer. Product Evaluation will be happy to reach out to them and/or invite them to submit an APL application.</p> <p>Regardless of agreements between a Contractor and Subcontractor, the Contractor is ultimately responsible for ensuring that all construction materials comply with the FDOT Specifications and all Contract Documents.</p>

**Instructions For Manufacturers, Fabricators, And Producers**

**BABA Compliance Certifications by Manufacturer (Current APL Products):** Current APL Manufacturers will be asked to submit/update their BABA certification through the APL system. The statement, per 2 CFR 184, will vary depending on the product type:

- Iron and Steel: All manufacturing processes from the initial melting through the application of coatings, occurred in the United States.
- Construction Materials: All manufacturing processes occurred in the United States.
- Manufactured Products: Manufactured in the United States and at least 55% of the total cost of all components are produced in the United States.

An email will be sent to the contact person(s) assigned to your products. Please follow the instructions within the email. Manufacturers of products currently covered by a FHWA waiver (Iron/Steel or Manufactured Product) will be contacted when documentation is needed.

**BABA Compliance Certifications by Producers and Fabricators (Current MAC Producers and Fabricators):** Producers and Fabricators for selected products will be moving from the [MAC Production Facility Listing](#) to the APL. This move will facilitate submittal of applicable

BABA Certification and other documents, per the specifications and Materials Manual. The BABA certification statement, per 2 CFR 184, will vary depending on the product type:

- Iron and Steel: All manufacturing processes from the initial melting through the application of coatings, occurred in the United States.
- Construction Materials: All manufacturing processes occurred in the United States.
- Manufactured Products: Manufactured in the United States and 55% of the total cost of all components are produced in the United States.

An email will be sent to the contact person(s) assigned to your products. Please follow the instructions within the email. Producers of products currently covered by a FHWA waiver (Iron/Steel or Manufactured Product) will be contacted when documentation is needed. Your current Internet Subscriber Account (ISA) email and password will be accepted in the PATH/APL system.

**Manufacturer/Producers who do not control the ENTIRE production process:** Send the following information to [Product.Evaluation@dot.state.fl.us](mailto:Product.Evaluation@dot.state.fl.us)

- The source of all materials (country) included in your product.
- Identify which intermediate products/supplies are purchased from others.
- Identify which manufacturing processes are completed/controlled by your company.

Product Evaluation will work with the appropriate FDOT Technical Experts to determine which documents may be needed to verify BABA compliance.

**Supplier/Distributor/Contractor** (Not the Manufacturer or Producer): The Department does not encourage, recommend, or restrict sales through vendors or other 3<sup>rd</sup> parties. We invite you to submit the manufacturer’s contact information, so that we may encourage them to submit an APL application.

Send Information to [Product.Evaluation@dot.state.fl.us](mailto:Product.Evaluation@dot.state.fl.us)

- Your Name and/or Company Name
- Product Name/Product Type(s)
- Manufacturer/Producer Name
- Manufacturer/Producer Contact Information, if available

Questions	Answers
If our product is on the APL, do we need to update anything and if so, by when?	Product Evaluation will contact manufacturers through the PATH/APL system, if additional documentation is requested.  A response within a week is requested. A product’s eligibility may be updated based on the currently available documentation.
When can manufacturers expect emails seeking certification under the new construction material/manufactured product classifications?	Product Evaluation has contacted manufacturers of products classified as “Construction Materials”, to request BABA documentation.  Manufacturers of other product types (exempt products) were contacted and will be notified during their normal

	<p>recertification process, to request BABA certification and/or other APL documents.</p> <p>All manufacturers are encouraged to verify that their product names, contact information, product photos, label images, warranty, installation instructions, and other documents are current and available with their APL listing.</p>
<p>Can the supplier/distributor submit the BABA compliance information?</p> <p>I am an authorized supplier for the manufacturer. Can I submit an application on behalf of the manufacturer?</p>	<p>If the supplier is authorized by the manufacturer as a private label, contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a> for guidance on 3<sup>rd</sup> party documentation.</p> <p>For all other products, the BABA documentation must come from the manufacturer.</p>

### Instructions For Local Agencies On FDOT Projects

FDOT encourages coordination with Local Agencies. When local agency projects are let with FDOT projects, the FDOT Standard Plans and Standard Specifications are applicable- including BABA rules.

See the [FDM](#) and/or [Florida Greenbook](#), as applicable, for additional information.

Questions	Answers
<p>Local agency projects (off the state highway system) that are using federal funds typically use Greenbook and NOT the FDM. In these cases, what is the guidance to be provided to the locals for non-standard (sole source) products?</p>	<p>Local agency projects need to consider ALL funding sources for the entire Contract.</p> <ul style="list-style-type: none"> <li>• If the majority funding is from FHWA, the FHWA guidance and FHWA waiver will be applicable.</li> <li>• If the majority funding is from another Federal agency, that agency’s guidance and waiver(s) will be applicable.</li> </ul> <p>As with all projects, the use of non-standard products should be approached with caution.</p> <p>Additional guidance will be coordinated with the FDOT Design Office to address Local Programs and the Greenbook.</p>
<p>Is removing a non-BABA compliant item from a federally funded bridge replacement project so that the Local Agency can install it after the FDOT project is complete, using local funding under a local agency project, acceptable?</p>	<p>See Federal Rules. Modifying the contract to circumvent Federal Rules is a violation.</p> <p>The IIA and BABA legislation are intended to invest in the nation’s infrastructure and economy. FDOT will comply with all Federal Rules.</p> <p>See the Designer instructions for additional information.</p>

<p>Will local agencies that maintain our traffic signals still have the ability to use proprietary products that match the parts they have in stock?</p>	<p>Yes. Local Agencies requesting proprietary products will continue to follow the <a href="#">FDM</a>.</p> <p>If the product(s) are not on the APL, the designer should follow the process shown above for designers to request an APL number.</p>
<p>In local administered contracts, we do not always use <a href="#">MAC</a>. How is that tracked?</p>	<p>We are working with State Materials Office and the Local Programs Office to address this concern.</p> <p>If the local project is not tracked in MAC, the local agency must maintain a record of APL# and/or BABA documentation for any Federal Agency audit.</p>
<p>Local agency off state system don't need to use <a href="#">MAC</a>, correct?</p>	<p>Correct. We are working with State Materials, Local Programs, and the Construction Office to see what options are available for Local Agencies.</p> <p>If Federal Funds are present, documents and/or APL#s used must be maintained for any future Federal Audit. We hope to have additional guidance soon.</p>
<p>Is there a timeframe on the Local Agency list?</p>	<p>The Local Agency List is to help local agencies "limit" APL products used within their maintaining area, such as a Traffic Controller that needs to be compatible with existing equipment. Local Agency requests today are addressed per the <a href="#">FDM</a> with a Sole Source request AND a modified specification. Implementation of this list is currently on hold.</p>
<p>What do we do now with the Local Agencies that are being impacted now and don't have additional funding for increased costs? Do we delay projects?</p>	<p>The cost impacts for BABA should be minimal for most products, but supply shortages nationwide will be identified. Waivers may be considered at the Federal level when national shortages are identified.</p> <p>Contact your District Work Program Office for significant project level cost concerns.</p> <p>Coordinate with your District Estimates Office for specific item level cost concerns.</p>
<p>If a Local Agency includes utility work (water, sewer, reclaim) on their project and BABA can't be followed, can a waiver be used?</p>	<p>All agencies using Federal Funds must comply with BABA rules, including utility work.</p> <p>Waivers depend on which Federal Agency is providing the funding. We "follow the money" with the applicable waivers from the Federal Agency with the majority funding.</p> <p>Product Evaluation will be happy to assist the local agency with identifying possible Federal waivers.</p>

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## Instructions For Utilities

Utility companies have separate contractual agreements with FDOT. While the BABA rules are still applicable on contracts with Federal Funds, the Utility is permitted to self-certify that materials are compliant.

### Self-Certification Rights & Responsibilities

- Utility may certify products meet Federal Rules
- Utility must retain documentation for any Federal audit

For commonly used items, Product Evaluation is willing to add APL products for utilities. Examples include: pipe, conduit, conductors, poles, cabinets, etc. The Utility Representative are encouraged to contact the State Utilities Engineer or [Product.Evaluation@dot.state.fl.us](mailto:Product.Evaluation@dot.state.fl.us) about adding product types to the APL.

FDOT and utility companies have ongoing conversations to discuss opportunities regarding BABA implementation and documentation. Recommendations may be submitted through your FDOT District Utility Engineer.

Questions	Answers
Conduit, Fiber Optic Cable, etc. - what does this mean for Utility Companies - reimbursable and non-reimbursable?	<p>Two issues: Conduit, Fiber Optic Cable, etc. are classified as Construction Materials. These materials are required to meet BABA rules when associated with FDOT projects.</p> <p>Reimbursable and Non-Reimbursable are terms to address whether FDOT or the Utility will pay for relocations.</p> <p>See the State Utilities Office website at <a href="https://www.fdot.gov/programmanagement/utilities/default.shtm">https://www.fdot.gov/programmanagement/utilities/default.shtm</a></p>
So it's up to Utility Companies to adhere to BABA, and keep their own records?	<p>Compliance is not optional; Federal Rules are applicable, as detailed throughout the Implementation Plan.</p> <p>Documentation methods for the utility items may include self-certification by the Utility. Contact the State Utilities Engineer.</p>
Does the APL contain typical electrical utility materials, conduits, conductors, insulators, poles, etc.?	<p>FDOT is working with various utility representatives. As common utility products are identified, manufacturers will be invited to submit BABA documentation for utility specific APL products.</p> <p>We will work with the State Utility Engineer, to determine which Utility companies prefer to use the APL for documentation.</p>

If the utility is only relocating facilities within existing right-of-way, does this exempt the utility from BABA requirements?	If only relocation operations are being performed, BABA requirements do not apply to existing/relocated materials.  Any new materials incorporated under the contract would need to meet BABA rules.

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## Construction and Traffic Operations: Push Button Projects

See the guidance above for all Construction projects. Refer to the CPAM for development of the Work Document.

Push Button projects may not be fully defined for location and/or quantities. However, the scope of work and all specification requirements should be complete- to enable the contractor to bid appropriately. Ensure that the [Instructions for Designers](#) and [Instructions for Construction](#) have been reviewed, to ensure BABA compliance.

See the guidance above for [Funding issues](#). Some projects may have Federal Funds from non-FHWA sources.

Additional Specifications for Push Button Projects are available at <https://www.fdot.gov/programmanagement/otherfdotlinks/pushbutton/default.shtm>

Questions	Answers
If there are no federal funds on my project, do I need to follow BABA rules?	See above for funding questions. Section 6 of the Specifications must be addressed.

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## Local Agency Projects (LAP)

See the **Local Programs Manual** at <https://www.fdot.gov/programmanagement/lap/lap-toc.shtm> for additional information.

- With FHWA Funding- entire Contract is Federalized
- With Federal Funding through Local Agency- entire Contract is Federalized
- Without Federal Funding from any source

Local Agencies are required to comply with BABA rules on FDOT projects. When Federal funds are included on a project, whether from a Local Agency or FDOT source, the entire contract is “Federalized”.

Designers working with Local Agencies are encouraged to discuss all funding sources, to determine whether other Federal Agency rules are applicable.

- If FDOT/FHWA funding sources are greater than local agency funding (applicable for most projects), follow FDOT’s BABA Implementation Plan.
- If the federal funding from non-FHWA funding sources is greater, follow the BABA rules (and any applicable waivers) for the funding source. The FHWA waivers for iron/steel or manufactured products may not be applicable.

Additional training will be provided through FDOT’s Local Programs Office. See [Funding guidance](#) above.

Questions	Answers
My project has HUD funding, but no FHWA funding. Which rules apply?	Verify if there are any additional Federal Funding sources (included in the State Project Number).  The agency with the greatest funding level may control the BABA rules and auditing requirements. Contact Product Evaluation for additional information and APL guidance.
My Grant is a “non-traditional FHWA award” managed by _____ (Rail, Landscape/ Highway Beautification, Planning, Safety, Traffic Ops). Is this subject to the same BABA rules?	Yes; all Federal Funds are subject to BABA rules.  The waivers in effect may vary, depending on the managing agency (FHWA or other) with the greatest funding level.
My project is a Class D (Off the State and National Highway Systems) project. Do I need to use the APL and FDM?	If Federal Funds are present on the project (or any other project let with the same contract), the entire contract is federalized and must meet BABA and other Federal Rules.

	<p>The APL is used by the Department to document BABA compliance for the products and materials installed. The FDM provides guidance on Proprietary Products and Design Exceptions. See the Local Programs Manual, Chapters 17 and 18, for additional guidance.</p>
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## Maintenance Projects

Most Maintenance projects are not subject to BABA rules.

Projects let with Construction Funds, managed by Maintenance, must follow BABA rules for Construction projects.

Note: For Landscape projects, often Construction Funds managed by Maintenance, the plants (trees, palms, shrubs, grass, etc.) are exempt from BABA rules. See the APL for other products or materials that may be subject to BABA rules.

Questions	Answers
Is the Irrigation System considered Temporary?	<p>If it is removed before the end of the contract, it is considered “temporary.”</p> <p>While an irrigation system may have a limited lifespan (1-5 years), <b>products or materials that remain in place</b> at the end of the contract <b>are subject to BABA rules</b>.</p> <p>See the APL for product classification for each product type. Additional Landscape and Irrigation products will be added to the APL, as the need is identified.</p>
The Landscaping is installed with State Funds. Do I need to comply with BABA?	<p>Additional review of funding may be needed, especially if the Design work was completed with the road/bridge design using Federal Funds.</p> <p>Contact <a href="mailto:Product.Evaluation@dot.state.fl.us">Product.Evaluation@dot.state.fl.us</a> for further guidance.</p>

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