



Build America, Buy America

Implementing the Buy America Preference



Build America, Buy America (BABA)

- Infrastructure Investments and Jobs Act (IIJA)
- Establishes “Buy America Preference” (BAP)
- Materials for covered projects must be produced in the United States
- Applicable to all federally-funded infrastructure projects
- Does not apply to
 - CDBG-DR / MIT
 - CDBG-CV
 - HOME-ARP. and
 - Other emergency response programs



What is “infrastructure”?

Infrastructure includes the construction, alteration (rehabilitation), maintenance, or repair of the structure's facilities, and equipment

Infrastructure includes:

- Roads, highways, bridges
- Public transportation
- Water systems
- Electrical transmission facilities & systems
- Utility installation or improvements
- Broadband infrastructure
- Buildings and real property (including housing)
- Public facilities
- Park Improvements
- Housing projects with 5 or more units





COVERED MATERIALS

Iron & Steel

- Items that consist completely or predominantly of iron, steel, or a combination of both
 - “Predominantly” means the cost of the iron and steel content exceeds 50% of the total cost of all the items’ components
- All manufacturing processes, from initial melting stage through the applications of coatings, must occur in the USA

Construction Materials

- Specifically listed (Phase 2): non-ferrous metals, lumber, plastic and polymer-based composite building materials, pipe, and tube
- Not Listed (Phase 3): all other plastic- and polymer-based materials, glass, fiber optic cable, optical fiber, engineered wood, drywall

Manufactured Products

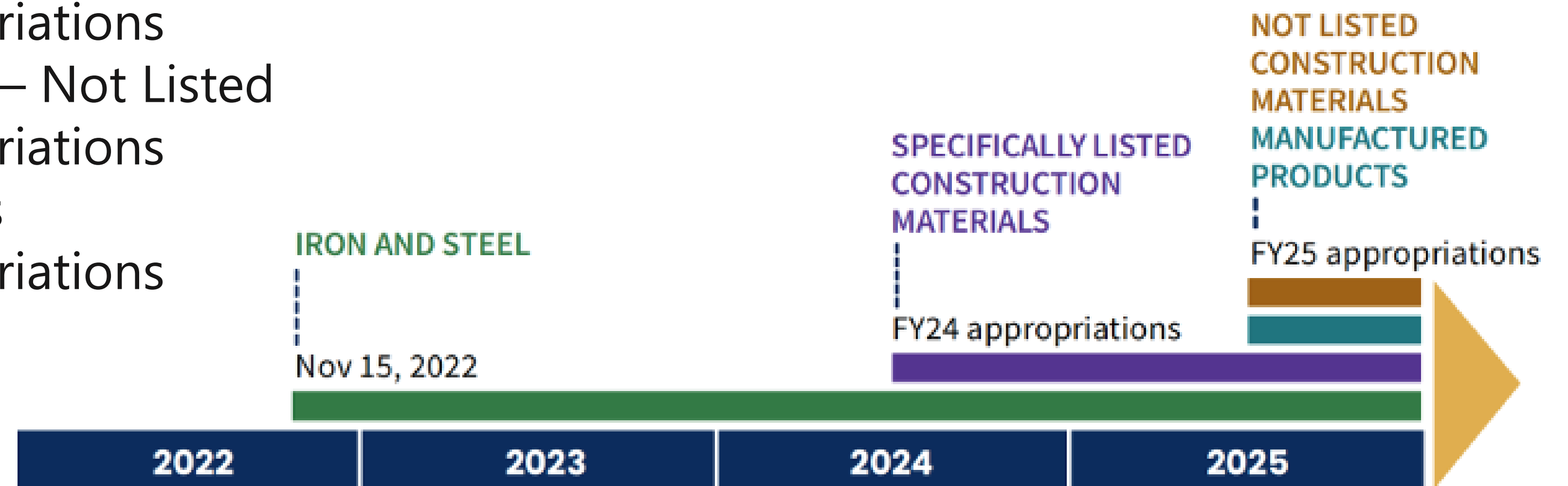
- Articles, materials, supplies that have been:
 - Processed into a specific form or shape
 - Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies



Phased Implementation Waiver

CDBG

- Iron & Steel
 - All funds obligated on or after November 15, 2022
- Construction Materials – Specifically Listed
 - All FY 2024 appropriations
- Construction Materials – Not Listed
 - All FY 2025 appropriations
- Manufactured Products
 - All FY 2025 appropriations





Exigent Circumstances Waiver

- Applies when there is an urgent need to immediately complete the project to protect life, ensure safety, or prevent the destruction of property
- Effective through November 23, 2027
- Example: A water line breaks after a storm, flooding nearby streets. CDBG funds are used for emergency repairs to restore service and prevent property damage.



Small Grants & De Minimis Waivers

Small Grants Waiver

- Applies to projects whose total cost (from all funding sources) is equal to or less than \$250,000.
- Effective through November 23, 2027

De Minimis Waiver

- If covered BAP materials for a portion of the project comprise no more than 5% of the total cost of covered materials used in a project (not to exceed \$1 million), the BAP can be waived for that portion of the project.
- Effective through November 23, 2027





Project-Specific Waivers

- Available on a limited, case-by-case basis
- Project-specific waivers are generally available for three reasons:
 - Public interest: Adhering to BABA would be inconsistent with the public interest
 - Nonavailability: Covered materials are not produced in the USA in sufficient and reasonable available quantities or of a satisfactory quality
 - Unreasonable cost: Inclusion of domestically produced covered materials will increase the cost of the overall project by more than 25%
- Requires an application, comment period, and approval by HUD and the Office of Management and Budget Made in America Office



Updated BABA Guidance

CPD Notice 25-01

Applicability to Housing Projects

- BABA does not apply to projects with 1-4 housing units
- Projects of 5 or more housing units are considered “infrastructure” and are subject to BAP

Step-By-Step Applicability Analysis

1. Is the project public infrastructure?
2. Is it funded by a Covered CPD Program?
3. Are Covered Materials being used?
4. What are the obligation dates—do they trigger BAP?
5. If coverage applies, can HUD general waivers be used?

CHECKLIST

Build America, Buy America Act:
Optional Buy America Preference
(BAP) Applicability Checklist


COMMUNITY
PLANNING
&
DEVELOPMENT

For more information on BABA
and the BAP, [visit the BABA
page](#) on the HUD exchange.

Overview

This checklist is an optional tool that may be used or adapted to assist with determining if the Buy America Preference (BAP) applies to an infrastructure project funded by a covered CPD program. This checklist follows the analysis steps as described in [Notice CPD 2023-12](#) and may be retained for recordkeeping purposes.

Project Information

Grantee	
Grant Number	
Activity Name	
Activity Number (IDIS/DRGR)	

Step 1:

Is the project an infrastructure project, as defined by the BABA statute?

☐ Yes	Continue to Step 2.
☐ No	The BAP does not apply. The BAP only applies to infrastructure projects. Stop here.



Contracts & Agreements

- BABA requirements must be included in the terms and conditions of all subawards, contracts, and purchase orders
 - Should use the same language included in HUD executed grant agreements
 - Should amend existing agreements to include BABA language
- Maintain documentation of executed agreements in project files



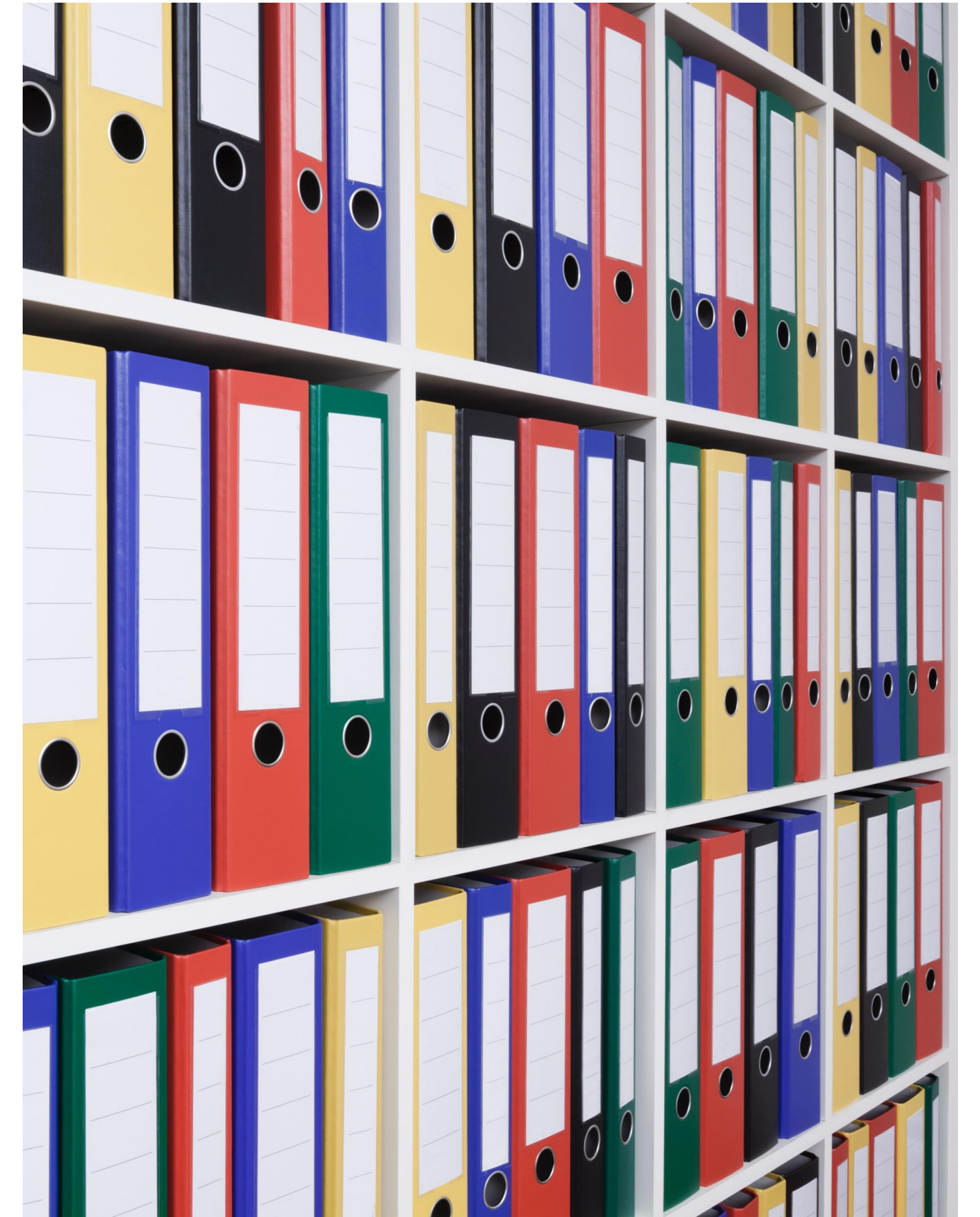
DOCUMENTING WAIVERS

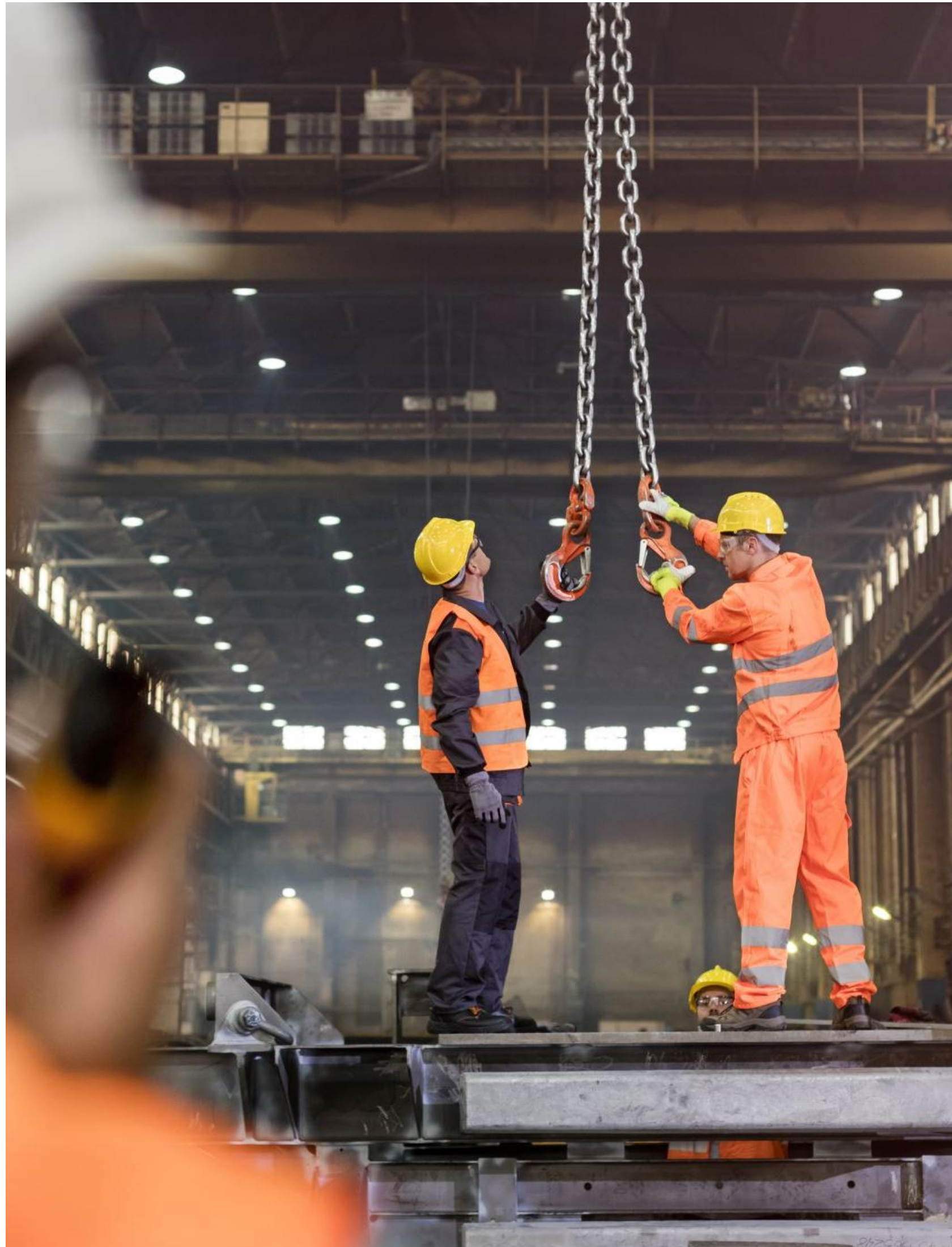
General Waivers

- Retain documentation in the file even if the project is exempt from BABA
- Prepare a brief memo explaining why the waiver applies
- HUD Template: Optional Buy America Preference (BAP) Applicability Checklist

Project-Specific Waivers

- Market research supporting need for the waiver
- Waiver application
- Approval from HUD and OMB Made in America Office (MIAO)





Documenting Project Compliance

Procurement list of covered materials purchased for the project:

- Funding source and obligation date
- Type of covered material
- Product or Material
- Costs per unit
- Total cost of product purchase or contract
- Manufacturer or Vendor
- Special Quality Standards, if applicable
- U.S. Made verification (Made in the USA label, product specifications, vendor or contractor certification, etc.)



Documenting Product Compliance

Signed Certifications

- Manufacturer Certification or Contractor Certification
- Should include:
 - project name & location
 - description of products
 - identification of location of production in the USA
 - Signature affirming the signer's knowledge of manufacturing process for the product and attestation that materials meet BABA requirements

Labels & Technical Details



Product details

Package Dimensions : 14.1 x 12.6 x 8.8 inches; 0.01 Ounces

Item model number : 378570000

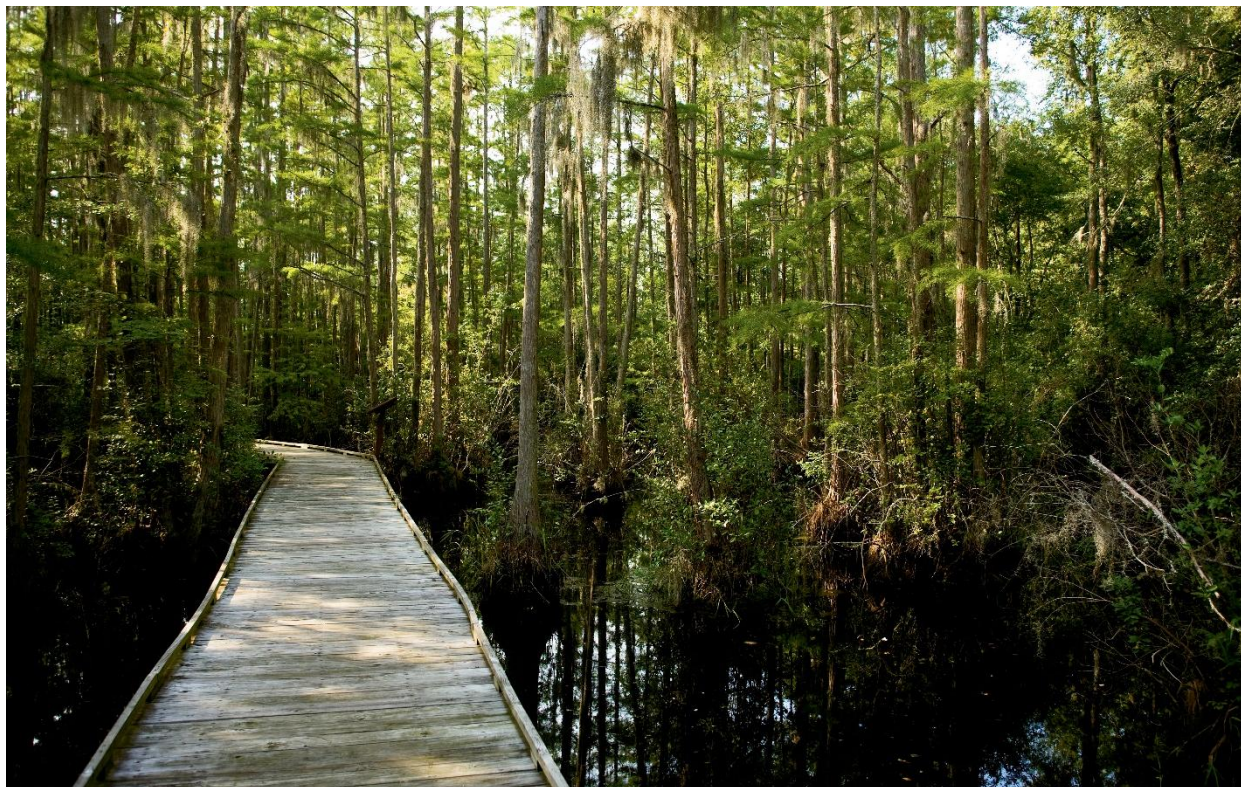
Date First Available : November 3, 2009

Manufacturer : Bel-Art Products

ASIN : B002VBW7XY

Country of Origin : USA

Best Sellers Rank: #1,221,753 in Industrial & Scientific (See Top 100 in Industrial & Scientific)
#37 in Lab Multichannel Pipettors



How to Find Made in America Products

- National Institute of Standards and Technology Manufacturing Extension Partnership (MEP) Supplier Scouting Service
- Small Business Administration Portals
 - [IndustryNet](#)
 - [Thomasnet](#)
 - [Connex](#)

A N Y Q U E S T I O N S ?
THANKS FOR LISTENING!