

# BUILD AMERICA, BUY AMERICA

EMPOWER: 2023 Channel Partner Summit

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# INFRASTRUCTURE INVESTMENT AND JOBS ACT (“IIJA”)

## “OLD WINE IN NEW BOTTLES”

### NEW LEGISLATURE AND TERMINOLOGY

- Signed into law on November 15, 2021
  - Includes 1) **Build America, Buy America Act** (Surface Transportation Assistance Act of 1982) AND 2) **Buy American Act** (1933)
  - The IIJA did not create additional requirement, but filled gaps:
    - Now includes all federally funded projects, even beyond US DOT
    - Now also includes construction materials.
- **The Build America, Buy America Act** are used by and applies to funding from the Federal Highway Administration FHWAY already incorporated “BABA” in their guidance in 1983.
- **The Buy American Act** requirements apply to direct Federal procurement (what the Federal government buys for its own use) and so not currently relevant for Traffic Signal and Sign products funded through state DOTs.

# TRAFFIC RELEVANT FEDERAL FUNDING

## FEDERAL HIGHWAY ADMINISTRATION

The Federal Highway Administration provides federal funding relevant to our industry and BABA applies to funding of items in 3 categories.

- 1) “**Construction materials**” includes an article, material, or supply (other than an item of primarily iron or steel is or consists primarily of non-ferrous metals; plastic and polymer-based products, glass, lumber, or drywall.
- 2) “**Manufactured products**” includes items that consist of two or more of the listed materials for “construction materials” that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process.
- 3) Items that are “**predominantly iron or steel**” are subject to the test for iron and steel.

Waiver was issued by FHWA in 1983,  
providing a conditional exemption for  
“Manufactured Products”.

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## SUMMARY AND COMPLIANCE

### SUMMARY OF CURRENT LEGISLATION

- **Nothing has changed since 1982** as the FHWA funding was already to comply with the original Buy America act.
- **FHWA “Manufactured Products” waiver** currently exempts all manufactured products from Buy America requirements
- **However**, the de minimis cost exception applies when steel and iron materials used in a project do not exceed 0.1 percent or \$2,500, whichever is greater.
- Under FHWA the location of product assembly is not relevant, as a result of the waiver.
- WE COMPLY WITH BUILD AMERICA, BUY AMERICA!

### COMPLIANCE AND REPORTING

- SWARCO McCain compliance with BABA:
  - Yes, because our products are exempt as a “manufactured product”, however
  - Yes and No, since our products includes Chinese steel and iron, but would comply if a federally funded project are below the threshold exemptions of 0.1 percent or \$2,500.
- We have provided or are providing DOT’s reports that lists percentage of Chinese based steel and iron included in our products, **currently ranging from 4% - 7%**.
- **Contractors are responsible for BABA compliance** for a FHWA funded projects, using steel and iron content provided by manufacturers.