

Re: **Updated:** Buy American / Buy America Act

Jan 2022

Buy American or Buy America? – First let us understand the specific differences between these two requirements as often the terminology is misused. It is key to understand which request as their requirements are different.

- **Buy American Act**– is the statute that created a national preference for the federal government’s procurement of domestic construction materials and supplies.
- **Buy America Act** – refers specifically to domestic content restrictions attached by the US Department of Transportation to construction of transportation projects for all federally funded purchases of steel, iron, and manufactured goods, including rolling stock purchases and capital leases.

Buy American Act (BAA)

The Buy American Act is covered under FAR Part 25 (FAR – Federal Acquisition Regulation) and defines rules for procurement and purchase preferences. We will address parts of this act in relation to products sold by Universal Douglas – Comprising both Douglas Lighting Controls and Universal Lighting Technologies

Key Items of the Buy American Act:

- [FAR25.001(b)] “The restrictions in the Buy American statute are not applicable in acquisitions subject to certain trade agreements (see subpart 25.4). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers. Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in subpart 25.4.”
 - These agreements include the Free Trade Agreement, the USMCA, and the WTO GPA countries.
[For more information see FAR25.4 Trade Agreements]
- [FAR25.001(c)(1)] “The Buy American statute uses a two-part test to define a "domestic end product" or "domestic construction material" (manufactured in the United States and a formula based on cost of domestic components). The component test has been waived for acquisition of commercially available off-the-shelf items.”
- [FAR2 Subpart 2.101] “Commercially available off-the-shelf item means any item or supply (including construction material) that is (i) A commercial item (ii) Sold in substantial quantities in the commercial marketplace; and (iii) Offered to the Government under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.”
- [FAR2 Subpart 2.101] “Domestic material. The Government requires that the cost of a product's components mined, produced or manufactured in the United States must exceed 55% of the cost of all of its components, unless waived as a commercial off-the-shelf (COTS) product.”

Universal Douglas

Universal Douglas – Canada Office
280-3605 Gilmore Way Burnaby, BC V5G 4X5, Canada
Phone: 877-873-2797

Universal Douglas – United States Office
51 Century Blvd. Ste 230, Nashville, TN 37214
Phone: 615-315-5100

www.universaldouglas.com | www.unvlt.com | www.douglaslightingcontrols.com

How to Interpret for Universal Douglas Products:

For components, these are defined under the “Domestic Material” section of Buy American, our components (LED drivers, LED modules, LED tubes, lighting controls, standardized lighting control panels and electronic fluorescent ballasts) are covered as COTS items [see above]

Our component products are therefore waived as they are all available as Commercial Off-The-Shelf (COTS) items, sold in substantial quantities without modification in the same form in which they are sold in the marketplace.

For Fixtures, The Buy American Act (BAA) specifies that goods manufactured in the USA are purchased when available. There is a two-tiered test under the BAA. 1) The article must be manufactured in the United States AND 2) The cost of domestic components must exceed 55% of the cost of all the components.

- 1) All the Appendix A referenced EVERLINE Fixtures assembled/manufactured by our company and supplied to you and your customer(s) are transformed in the United States and in turn would meet the Buy American provisions contained in Federal Acquisition Regulations (FAR). Specifically, EVERLINE Fixtures are either manufactured or substantially transformed in the United States.

Buy America Act

The Buy America Act is the provision that requires that federal tax dollars used to purchase steel, iron, and manufactured goods used in a transit project are produced domestically in the United States. [49 U.S.C. Section 5323(j) / FAST section 3011]. FTA’s Buy America requirements apply to third-party procurements by FTA grant recipients. A grantee must include in its bid or request for proposal (RFP) specification for procurement of steel, iron, or manufactured goods (including rolling stock) an appropriate notice of the Buy America provision and require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate in accordance with [49 CFR Section 661.6 or 661.12.].

It is important to note here the MOST of this is towards large scale infrastructure, roads, railroads, bridges, etc. For example, “rolling stock” is defined as train control, communication, traction power equipment, and rolling stock prototypes.

How to Interpret for Universal Douglas Products:

All Universal Douglas products fall under the definition of a “Manufactured Good”. This section of the provision states that “Manufactured goods must be 100-percent produced in the U.S. A manufactured good is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) All of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.” [49 CFR 661.5(d)]

Lastly there is a provision for “small purchases” of a value of under \$150,000 – if the bid for lighting or controls is under this amount it does not have to meet this provision.

For Components, these are defined as a subcomponent of the systems and can be used by a North America Manufacturer to produce an end use product that would meet the two test criteria.

Universal Douglas

For Fixtures, we have a limited number of fixtures and controls enclosures that are manufactured in the United States, if a need for a fixture or control enclosure is present, please request with your local sales representative for us to verify if it can qualify the two test criteria. Also note that in most instances the portion of the individual project that requires our products, the total would be **under the \$150,000 threshold** and if so no compliance is needed.

Our component and fixtures products are therefore waived if the total purchase is under the \$150,000 threshold.

In Closing

It is important to note that LED solutions, LED Fixtures, LED Retrofit Kits, Lighting Controls, and electronic fluorescent ballasts have been and continue to be successfully purchased for federal supplies and projects under current requirements. In some instances a waiver will need to be applied for (waivers are not accepted by manufacturers the contract holder must do so) or please ask your local sales representative so we can determine our content amount and ability to manufacture in the USA.

Sincerely,



Chris Holstein

Vice President of Product Management, Pricing, and Marketing

Universal Douglas

Universal Douglas – Canada Office
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Universal Douglas – United States Office
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Appendix A – List of Buy American Compliant EVERLINE Fixtures and Douglas Lighting Controls

- VLA14, VLA22 & VLA24
- STRP424, STRP448 & STRP496
- BLC48 - BAA compliant options are available
- PLA - BAA compliant options are available
- PRK - BAA compliant options are available
- Douglas Lighting Control Panels
 - WLCP-CPxx/xx and WLCP-RPRxx/xx panels are made to order but are standard builds consisting of COTS items.

Additional Information:

American Recovery and Reinvestment Act – Buy American Act subpart

You should not receive any requests for ARRA funds, this program started in 2009 has run its course and no funds are available for projects.

Made in USA

We are often asked if our products are Made in the USA, No United States supplier needs to certify to this EXCEPT Automobiles, Textiles, and Furs. A company may choose to make this statement on their own, if they claim “Made in the USA” or “Made in America” the FTC requires that it most “contain no – or negligible – foreign content” and the final assembly must take place in the United States (not a TAA country). Alternately a company can claim the amount of US content, exp. “60% US content”. This is a voluntary certification for our industry, the only requirements we need to certify to are the Buy America(n) regulations.

Assembled in the USA

When a manufacturer can not fully certify were the subcomponents come from they may claim Assembled in the USA. The “Assembled in the U.S.A” label which allows for foreign subcomponents as long as there is a “substantial transformation” that occurs in the United States.

FTA clarification on Subcomponents

The Federal Transit Administration (FTA) clarified Buy America requirements for its projects in 2007; Federal Register 49 CFR Part 661 RIN 2132-AA90 Buy America Requirements; End Product Analysis and Waiver Procedures Section 4. These reference a definition in 49 CFR 661.5 (d). The importance here is that our components are a subcomponent of a lighting system and once defined as a subcomponent per FTA always a subcomponent even on the replacement market:

(d) For a manufactured product to be considered produced in the United States:

(1) All of the manufacturing processes for the product must take place in the United States; and

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(2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, **regardless of the origin of its subcomponents.**

DOE clarification on Subcomponents

NEMA also cites a U.S. Department of Energy document that explicitly states that foreign-made electronic ballasts are “*supply items, not construction items. They are therefore acceptable* [under the Buy America Act].”

Universal Douglas manufacturing location Mexico

Our electronic ballasts, LED drivers, and LED modules are manufactured in a Trade Agreement Country (TAC) (FAR25.4), specifically Mexico (Avenida de la Industrial Lateral S/N, Fracc. Industrial Del Norte, Matamoros, Tamps; Mexico, 873160).

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