



April, 2017

Re: **Updated:** Buy American Act

Buy American Act at a Glance – in relation to Lighting Ballast, LED Drivers, LED Modules, Lighting Components, LED Lamps, and Lighting Fixtures.

Buy American or Buy America? – First understand we are speaking to **Buy American** provisions specifically in this document.

- Buy American – is the statute that created a national preference for the federal government’s procurement of domestic construction materials and supplies.
- Buy America – refers specifically to domestic content restrictions attached by the US Department of Transportation to construction of transportation projects.

### **Buy American Act for Components:**

For components, these are defined under the “Domestic Material” section of Buy American defined as:

“Domestic material. The Government requires that the cost of a product's components mined, produced or manufactured in the United States must exceed 50% of the cost of all of its components, unless waived as a commercial off-the-shelf (COTS) product.”

Our components (electronic fluorescent ballasts, LED drivers, LED modules, and LED tubes) are covered as COTS items defined as

“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

Our component products are therefore waived as they are all available as COTS items, sold in substantial quantities without modification in the same form in which they are sold in the marketplace.

### **Buy American Act 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 50% of the cost of all the components. However, in accordance with 41 USC 431 this component test of the Buy American Act has been waived for acquisitions of Commercially Available Off the Shelf (COTS) items. (See above)

- 1) All of the Appendix A referenced EVERLINE Fixtures assembled/manufactured by our company and supplied to you and your customer(s) are “Made in America” as such term is defined in the Buy American provisions contained in Federal Acquisition Regulations (FAR). Specifically, EVERLINE Fixtures are either manufactured or substantially transformed in the United States.



- 2) Generally speaking ballasts, drivers, modules, and LED lamps are excluded from the content provision as they are considered a COTS item. Common consumer goods and construction materials are qualified as COTS items.

**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.

**In Closing**

It is important to note that electronic fluorescent ballasts and LED solutions have been and continue to be successfully purchased for federal supplies and projects under current Buy American requirements. We have no indication that you would not be able to supply these ballasts to the federal government based on the information outlined above. The further clarification in 2007 of the Federal Transit Administration's requirements reinforces the point of view that our components are a subcomponent and if used in an end-use product manufactured in the USA, the replacement would remain a subcomponent of the system and would not be required to be U.S. manufactured under a Federal Buy America requirement.

Sincerely,

A handwritten signature in black ink that reads 'Chris Holstein'.

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Chris Holstein  
Vice President of Product Management



## Appendix A – List of Buy American Compliant EVERLINE Fixtures

- GPA14, GPA22 & GPA24
- VLA14, VLA22 & VLA24
- STRP424, STRP448 & STRP496
- WRP924 & WRP948
- BLC48

### Additional Information:

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

(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.**

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].”

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).