

Buy America

NMDOT Specifications

106.12 PREFERENCE FOR DOMESTIC MATERIALS

The Contractor shall provide Materials in accordance with the Buy America Requirements (23 CFR § 635.410) on federal-aid Projects.

The Contractor shall bear the burden of proof and the cost to prove the origin and place of manufacture of iron and steel products and Materials.

Canceled on 12/22/2015



Memorandum

Subject: **ACTION:** Clarification of Manufactured Products under Buy America

Date: DEC 21 2012

From: Mr. John R. Baxter
Associate Administrator for Infrastructure

In Reply Refer To: HIPA-30

To: Division Administrators
Directors of Field Services

This memo clarifies the Federal Highway Administration's (FHWA) position regarding application of Buy America requirements to manufactured products. Our current Buy America policy is based upon the statutory provisions in the Surface Transportation Assistance Act of 1982, as implemented with the November 25, 1983, final rule.

In the preamble to the [1983 final rule](#) (48 FR 53099), after soliciting and considering public comments, the FHWA found that it was in the public interest to waive application of Buy America to manufactured products other than steel and iron manufactured products. As the Federal-aid Highway Program evolved and technology improved, the FHWA clarified the applicability of the standing waiver for manufactured products in a [December 12, 1997, memo](#). In this 1997 memo, the FHWA clarified that, while Buy America does not apply to manufactured products, Buy America does apply to components of "predominantly steel products."

With enactment of the American Recovery and Reinvestment Act (ARRA), the FHWA formed National Review Teams (NRT) (now known as Project Management Improvement Teams) to conduct reviews and make recommendations on how to improve the delivery of ARRA funded projects. One NRT review recommended that a State's Buy America certification be clarified to ensure that all covered steel and iron meets FHWA Buy America requirements. In working to address this finding, questions have arisen regarding the scope of the application of the 1983 public interest waiver for manufactured products. For example, it has been suggested that nuts, bolts, washers, and other miscellaneous steel or iron parts used in common off-the-shelf products such as toilets and the filaments in light bulbs must be Buy America compliant. Given these questions, the FHWA is concerned that such a reading of Buy America is inconsistent with the previous 1983 waiver decision and is not cost-effective to administer. Accordingly, it has become necessary to clarify the applicability of the waiver for manufactured products.

The FHWA continues to support the Buy America waiver for manufactured products in the 1983 final rule, as clarified by the 1997 memo. In particular, the waiver was intended to apply to all manufactured products except for steel and iron manufactured products. For example, the 1983 rule specified that traffic controllers are covered by the waiver since these products have many different components that are difficult to trace. Over time, however, some States have subjected signal heads and other traffic control equipment to Buy America and have sought project specific waivers. In reexamining the extent of the 1983 waiver in light of the NRT finding, we believe that the scope of the waiver was intended to encompass miscellaneous steel or iron components and subcomponents that are commonly available as off-the-shelf products such as faucets, door hardware, and light bulbs.

Thus, in order for a manufactured product to be considered subject to Buy America, the product must be manufactured predominantly of steel or iron. The FHWA deems a product to be manufactured predominantly of steel or iron if the product consists of at least 90% steel or iron content when it is delivered to the job site for installation. For purposes of applying Buy America and determining whether a product is a steel or iron manufactured product, the job site includes the sites where any precast concrete products are manufactured.

Examples of products that are subject to Buy America coverage include, but are not limited to, the following:

- steel or iron products used in pavements, bridges, tunnels or other structures, which include, but are not limited to, the following: fabricated structural steel, reinforcing steel, piling, high strength bolts, anchor bolts, dowel bars, permanently incorporated sheet piling, bridge bearings, cable wire/strand, prestressing / post-tensioning wire, motor machinery brakes and other equipment for moveable structures;
- guardrail, guardrail posts, end sections, terminals, cable guardrail;
- steel fencing material, fence posts;
- steel or iron pipe, conduit, grates, manhole covers, risers;
- mast arms, poles, standards, trusses, or supporting structural members for signs, luminaires, or traffic control systems; and
- steel or iron components of precast concrete products, such as reinforcing steel, wire mesh and pre-stressing or post-tensioning strands or cables.

The miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above components (or manufactured products that are not predominantly steel or iron) are not subject to Buy America coverage. Examples include, but are not limited to, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, etc.

If you have any questions, please contact either Mr. Gerald Yakowenko at 202-366-1562 or Mr. Edwin Okonkwo at 202-366-1558.

Expired Exclusions

- 90% steel or iron content
- miscellaneous steel or iron components, subcomponents and hardware

Addendum - NTC

CCRB
March 17, 2016

NOTICE TO CONTRACTORS

Buy America

The following clarifies the 2014 Edition of the New Mexico Department of Transportation's (NMDOT) Standard Specifications for Highway and Bridge Construction Section 106.12 - "Preference for Domestic Materials" which requires the Contractor to provide Materials that comply with the Buy America requirements in 23 CFR § 635.410.

Previous interpretations of the Buy America requirements allowed exclusions for certain steel and iron manufactured products that contained less than 90% steel or iron components. Previous interpretations also allowed exclusions for miscellaneous steel and iron components, subcomponents and hardware. These exclusions no longer apply.

Because these exclusions no longer apply, the Contractor shall provide certification proving that all steel or iron Materials were manufactured in the United States before performing Work that uses steel or iron Materials. Additionally, the Contractor shall provide certification that all coatings on the steel or iron Materials were applied in the United States. If these certifications are not provided, the NMDOT may take any remedies available under the Contract.

Other exclusions to the Buy America requirements remain in effect, including but not limited to, minimal use of foreign steel and iron Materials. The exclusion allows the Contractor to use foreign steel or iron Material that does not exceed one-tenth of one percent (0.1%) of the Total Bid Amount or that does not exceed \$2,500.00 whichever is greater. To comply with the minimal use exclusion, the Contractor shall provide to the NMDOT Project Manager invoices showing the cost of the steel or iron Material as delivered to the Project.

23 CFR § 635.410 (4)

(4) 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. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.

Questions