

BUY AMERICA

FHWA's Buy America policy requires that all steel and iron products permanently incorporated into a federal-aid project must be manufactured in the United States, including all coatings. Any process which modifies the chemical make-up, physical shape, or finish of any steel or iron item must be performed in the United States.

Any steel or iron item must be manufactured in the United States

What does Buy America apply to?

Buy America applies to any product or utility work on federal projects regardless of funding. This means that the requirements apply to the entire federal-aid project even if some steel or iron products are purchased with non-federal funds.

Buy America requirements apply to all utility relocation work (regardless of funding) that is part of an FHWA-funded contract and to all federally-funded standalone utility work. Standalone, non-federally-funded contracts are not affected.

Are there any exceptions?

Buy America provisions allow small portions of foreign steel or iron products: less than one tenth of one percent of the total contract cost (0.1%) or \$2,500 – whichever is greater.

It is important for Local Public Agencies (LPAs) and contractors to be vigilant in their documentation, as the consequences of exceeding this amount can be severe. FHWA suggests that LPAs maintain a separate file for "Buy America" to facilitate oversight, certifications and compliance.

What do I need to comply with the Buy America provision?

Certification that the manufacturing process for the steel and iron materials, including the application of coatings, have occurred in the United States must be included for the project to be approved. These certifications must be current and specific to the material and project.

The Buy America certification must be available at the time of product delivery and before incorporating the steel/iron product in the project. The documentation must include:

- Description of the material
- Quantity of the material
- Country where the steel or iron product was melted and manufactured including application of coatings
- Notarized signature of a person with the legal authority to bind the supplier to the statements on the document

A typical certification states: "All manufacturing processes for these steel and iron materials, including the application of coatings, have occurred in the United States."

Choose the right form for your project

Must be completed for each individual item used on the project

DC-17: Contractor's Certificate of Compliance Items Containing Steel & Iron

Must be used if a utility company will work on the project

DC-17U: Utility Certificate of Compliance Items Containing Steel & Iron

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Use “Step Certification”

If manufacturing occurs at different locations, Step Certification is required.

Step Certifications are separate, self-supporting certifications that are prepared at each location and accompany the product to the job site.

For steel used in precast concrete, the precast plant is required to comply with an approved Buy America Compliance Plan, so no Step Certification is needed.

Who is responsible for ensuring compliance?

Many different roles are responsible for compliance with Buy America provisions.

If threshold limits are exceeded, the LPA must replace the foreign steel/iron with domestically produced steel/iron. If the steel/iron cannot be replaced, then the entire project cost is not eligible to receive federal funding. If limits are not exceeded, the LPA should continue to track the placement of foreign steel/iron items on the project.



The LPA

- Ensures certifications are received at the time of product delivery.
- Provides the certification for materials which the CM has deemed missing when notified
- Determines the aggregate cost of the materials and ensures the threshold allowances for foreign steel or iron materials is not exceeded and provides this information to the CM for review



The Contractor

- Establishes compliance to the LPA inspector before using steel/iron product on a federal project



The Manufacturer

- Provides relevant certification documentation to the LPA



The Contract Manager (CM) - Local Aid Staff:

- Confirms receipt of manufacturers' certifications for all items requiring a certification
- Reviews source documentation to confirm placement of the material through delivery tickets, inspection reports, calculations, measurements and photographs
- Notes on the appropriate document if certification(s) are missing
- Reviews the aggregate cost of the materials and threshold allowances determined by the LPA

FOR MORE INFORMATION

Laws & Regulations

- **FHWA Buy America Statutory Provisions:** 23 U.S.C.313 <https://www.govinfo.gov/app/details/USCODE-2011-title23/USCODE-2011-title23-chap3-sec313>
- **FHWA Buy America Regulatory Provisions:** 23 CFR 635.410 <https://www.govinfo.gov/app/details/CFR-1999-title23-vol1/CFR-1999-title23-vol1-part635>
- **Buy America Certifications-Steel/Iron Thresholds:** 23 CFR 635.410, 23 CFR 635.410(b)(4), 23 CFR 635.410(c)(1)
- **Buy America, Project Waivers:** 23 CFR 635.410(c)(1)

Resources

- **FHWA Bureau of Materials:** <https://www.fhwa.dot.gov/pavement/materials/>
- **FHWA Construction Program Guide:** <https://www.fhwa.dot.gov/construction/cqit/buyam.cfm/>
- **Buy America Q&A:** https://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm
- **NJDOT Local Aid Resource Center:** <https://njdotlocalaidrc.com/>

~ Guidance ~

Buy America

All Federally Funded Construction Projects

Reference:

The FHWA Buy America statutory provisions are in 23U.S.C.313 and the regulatory provisions are in 23CFR635.410.

Buy America

Q&A's: http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm

Applicability:

Applicable to all Federal-aid projects.

Guidance:

Simply stated, the FHWA's Buy America policies require a DOMESTIC manufacturing process for ALL steel or iron products that are permanently incorporated in a Federal-aid highway construction project. Manufacturing begins with the initial melting and mixing, and continues through the coating stage. Any process which modifies the chemical makeup, physical shape or finish is considered a manufacturing process and as such must be performed in the United States. Waivers may be granted, in rare cases that meet specified criteria. Refer to the Q&A's above for more details.

Buy America requirements apply to the entire federal aid project even if some steel or iron products are purchased with non federal funds. All steel/iron must be manufactured in the United States.

Buy America provisions do allow use of a small portion of foreign steel and iron materials (less than one tenth of one percent of the total contract cost [0.1%] or \$2500, whichever is greater). Be vigilant and document. The consequences of exceeding this amount can be severe. Maintain a separate file for "Buy America" to facilitate oversight, certifications and compliance. It's that important.

Buy America requirements apply to all UTILITY RELOCATION WORK (regardless of funding) that is part of a FHWA funded contract and to all federally funded standalone utility work. Standalone, non-FHWA funded, contracts are NOT covered.

Compliance:

The RE needs to receive the Buy America certification at time of delivery--absolutely PRIOR TO incorporating the steel/iron product in the project. Typically, the certification states:

"All manufacturing processes for these steel and iron materials, including the application of coatings, have occurred in the United States."

The certification MUST BE current, dated, signed and be specific to the material and project at hand. Step certification is encouraged when manufacturing occurs at different locations. This involves separate, self-supporting, certifications that are prepared at each location and accompany the product to the job site—a documentation trail confirming ALL manufacturing in the US.