

**Replace section 6-1.04 with:**

**6-1.04 BUY AMERICA**

**6-1.04A General**

Buy America requirements do not apply to the following:

1. Tools and construction equipment used in performing the work.
2. Temporary work that is not incorporated into the finished project.

An article, material, or supply to be permanently incorporated in the project should only be classified into one of the following categories:

1. Iron or steel products
2. Manufactured products
3. Construction materials
4. Excluded materials

Excluded materials means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

**6-1.04B Crumb Rubber (Pub Res Code § 42703(d))**

Furnish crumb rubber with a certificate of compliance. Crumb rubber must be:

1. Produced in the United States
2. Derived from waste tires taken from vehicles owned and operated in the United States

**6-1.04C Iron or Steel Products**

Iron or steel products must be melted and manufactured in the United States except:

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials
2. If the total combined cost of the materials produced outside the United States does not exceed the greater of 0.1 percent of the total bid or \$2,500, the material may be used if authorized

Furnish iron or steel products to be incorporated into the work with certificates of compliance and certified mill test reports. Mill test reports must indicate where the steel and iron were melted and manufactured.

All melting and manufacturing processes for these materials, including an application of a coating, must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied.

The following iron or steel products have received an approved Buy America waiver for this Contract and are therefore not subject to Buy America requirements:

1. \_\_\_\_\_
2. \_\_\_\_\_

**6-1.04D Manufactured Products**

Manufactured products mean articles, materials, or supplies that have been:

1. Processed into a specific form and shape; or
2. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies

Per 23 CFR 635.410, these products must be manufactured in the United States.

Manufacturer, in the case of manufactured products, means the entity that performs the final manufacturing process by bringing individual elements together that produces a manufactured product.

If an item is classified as an iron or steel product, a construction material, or an excluded material under the definitions set forth under this Buy America section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under this Buy America section may include components that are construction materials, iron or steel products, or excluded materials.

Iron or steel used in precast concrete manufactured products or enclosures for Intelligent Transportation Systems (ITS) must meet the requirements of section 6-1.04C regardless of the amount used.

Iron or steel used in other manufactured products must meet the requirements of section 6-1.04C if the cost of steel and iron components is 50 percent or more of the total cost of the manufactured product.

Furnish manufactured products to be incorporated into the work with certificates of compliance with each project delivery. The manufacturer's certificate of compliance must identify where the manufacturing occurred and attest specifically to compliance with the 23 CFR 635.410 standard.

The following manufactured products have received an approved Buy America waiver for this Contract and are therefore not subject to Buy America requirements:

1. \_\_\_\_\_
2. \_\_\_\_\_

#### **6-1.04E Construction Materials**

The following construction materials must be produced in the United States under standards in 2 CFR 184.6:

1. Non-ferrous metals
2. Plastic and polymer-based products such as:
  - 2.1. Polyvinylchloride
  - 2.2. Composite building materials
3. Glass
4. Fiber optic cable including drop cable
5. Optical fiber
6. Lumber
7. Engineered wood
8. Drywall

All manufacturing processes for these materials as defined in 2 CFR 184.6 must occur in the United States.

Furnish construction materials to be incorporated into the work with certificates of compliance with each project delivery. Manufacturer's certificate of compliance must identify where the construction material was manufactured and attest specifically to compliance with the 2 CFR 184.6 standard.

Minor additions of articles, materials, supplies, or binding agents to these construction materials do not change the categorization of the construction material.

The following construction materials have received an approved Buy America waiver for this Contract and are therefore not subject to Buy America requirements:

1. \_\_\_\_\_
2. \_\_\_\_\_

#### **6-1.04F Buy America Waiver for the De Minimis Costs for Manufactured Products and Construction Materials**

A De Minimis Costs waiver can waive the application of FHWA's Buy America requirements for manufactured products and construction materials under a single project when the total cost of non-compliant manufactured products and construction materials is no more than the lesser of \$1,000,000 or 5 percent of the total applicable costs for the project.

The percentage threshold is calculated based on the following formula:

$$X = NC / TA$$

where:

$X$  = percent threshold

$NC$  = total cost of non-compliant construction materials and manufactured products

$TA$  = total applicable project costs (steel, iron, construction materials and manufactured products;  
does not include excluded materials)

This threshold is based on the actual cost of the steel, iron, construction materials, and manufactured products, not the anticipated cost of those materials. The contractor must account for compliant and non-compliant Department-Furnished Materials for the project in the De Minimis Costs Waiver Worksheet calculation if provided by the Department as supplemental project information.

See further instructions for the De Minimis Costs waiver request in the Notice of Materials to be Used form.