

Frequently Asked Questions (FAQ) Concerning Buy America

This FAQ is to assist potential bidders with questions on the revised Buy America requirements that became effective on March 20, 2025. Please submit a bidder inquiry through the Contractor's Corner Portal Web Portal for additional questions.

Disclaimer: This document provides general guidance but will not be used as a substitute for applicable laws, or regulations (see Department of Transportation Federal Highway Administration, Code of Federal Regulations Title 23, Section 635, (23 CFR 635), "Construction and Maintenance," [January 14, 2025]). Individual circumstances will be independently evaluated, and engineering judgement will be applied when appropriate.

MATERIALS CLASSIFICATION

1. How do we classify an item?

Use the Decision Tree Chart to categorize the item. Review the classification FAQs for details and examples. See Attachment 3 of Construction procedure directive 26-1, "Buy America Update."

2. If Non-Standard Special Provision 6-1.04, "Buy America," lists materials and products covered by Buy America but does not list materials and products not subject to Buy America and a material or product is not listed, is it exempt from Buy America?

Certain materials and products are exempt from Buy America requirements. Section 70917(c) of Build America Buy America (BABA) Act lists excluded materials including cement, cementitious materials, aggregates, aggregate binding agents or additives, when delivered to the project as individual constituents or in plastic form, for example, ready-mix concrete, or hot mix asphalt. Other materials that do not fall under any BABA classification are also exempt from Buy America requirements.

3. What classification does fly ash fall under?

Fly ash is a cementitious material and it is part of the Section 70917(c), "Excluded Materials." Fly ash is classified as an excluded material. Refer to the Decision Tree Chart for more information.

4. What classification does wood formwork that is temporarily used for constructing cast-in-place concrete elements fall under?

If the wood formwork is not permanently incorporated into the completed structure and is a temporary work item. Temporary work items are exempt from Buy America requirements. Refer to the Decision Tree Chart for more information.

5. Temporary lighting systems used during construction would fall under what classification?

The lighting systems are temporary works not permanently incorporated into the final project and are exempt from Buy America requirements. Refer to the Decision Tree Chart for more information.

6. What classification do steel form inserts that are embedded in a precast wall panel fall under?

Items that are predominantly steel within precast concrete products fall under the iron or steel product classification. The steel form inserts are categorized as an iron or steel product. Refer to the Decision Tree Chart for more information.

7. How is an Intelligent Transportation Systems (ITS) traffic cabinet with a steel enclosure that arrives at the job site completely ready to be installed and wired up classified?

According to 23 CFR 635.410, ITS is classified as manufactured products, however the cabinet or enclosures of such systems that consist of wholly or predominantly of iron or steel or a combination, should also meet the requirement of iron or steel. In this scenario, a preassembled cabinet system will need to satisfy the manufactured products requirement. In addition, the steel enclosure must comply with existing Buy America requirements for iron and steel.

8. How is an Intelligent Transportation Systems (ITS) traffic cabinet with a plastic composite enclosure that arrives at the job site completely ready to be installed and wired up classified?

When an ITS traffic cabinet has a plastic or non-ferrous metals composite enclosure that is not predominantly composed of steel or iron, the enclosure would not be classified as an iron or steel product. The ITS traffic cabinet is classified only as a manufactured product. Refer to the Decision Tree Chart for more information.

9. If a traffic signal cabinet is delivered to the job site as separate components, (such as a cabinet enclosure, controller unit, and wiring) and needs to be assembled and wired in the field. How is this item classified?

Since the traffic signal cabinet is delivered as separate components and requires field assembly to become functional, the cabinet is not considered a pre-assembled manufactured product, and the components must be individually classified as they are

delivered to the job site. The cabinet enclosure is classified based on its material, such as iron or steel product if steel enclosure or construction material if aluminum enclosure. The controller unit and wiring are composed of multiple materials delivered as assembled units and are classified as manufactured products.

10. Polyvinyl Chloride (PVC) conduits and raceways with manufacturer-applied coatings, standard couplings, incidental accessories, and minor additions fall under what classification?

Since the conduits and raceways are comprised of PVC, they are classified as construction materials. According to Code of Federal Regulations Title 2, Section 184.3 (2 CFR 184.3), "Definitions," minor additions of articles, materials, supplies, or binding agents do not change the classification of the construction material, and the manufacturer-applied coating and minor additions do not change the classification of the conduits and raceways. The conduits and raceways may be classified as manufactured products if the standard couplings and incidental accessories are comprised of other articles, materials, or supplies and creates a product with different properties than the individual conduits or raceways, according to 23 CFR 635.410(c)(1)(iv).

11. What classification do high performance glass beads that are mixed into striping paint fall under?

High performance glass beads are solely comprised of glass that have some minor additions to improve performance. They are classified as a construction material. Refer to the Decision Tree Chart for more information.

12. If the project has aluminum light poles that arrive at the job site in separate shipments, such as aluminum posts, luminaires, and steel fasteners separate, and must be assembled and wired at the job site. What classification does the light pole fall under?

The aluminum pole sections are comprised of non-ferrous metal and would not be exempt from BABA, an excluded material, or an iron or steel product. Since the non-ferrous metal components arrive separately, and do not contain other articles, they are classified as construction materials. The fasteners are composed of steel and are classified as iron or steel products. The luminaires are composed of multiple materials to create a product with different properties than the individual materials and are classified as manufactured products. Refer to the Decision Tree Chart for more information.

13. If the project has aluminum light poles that arrive at the jobsite fully assembled, ready to be installed and light poles are ready to anchor and wire up. What classification do these poles fall under?

Since the aluminum light poles arrived at the job site fully assembled and the various components were combined to create a product with different properties than the individual materials, it would be considered a manufactured product. Refer to the Decision Tree Chart for more information.

14. What classification do transparent soundwalls fall under?

If the acrylite (transparent) panels and steel frame are delivered separately to the jobsite then acrylite would be a manufactured product and the steel frame would be an iron product, however, if they are pre-assembled off-site in longer sections and delivered to the jobsite, they would be considered manufactured products. Refer to the Decision Tree Chart for more information.

15. What classification would a pine tree fall under?

A pine tree will not fall under any of the existing BABA classification; it would be classified as other material and will be treated the same as excluded materials. Refer to the Decision Tree Chart for more information.

DE MINIMIS

16. Is there any contractual allowance for non-domestic sources for additional construction materials, such as non-ferrous metals, plastic and polymer-based products, glass, fiber optic cable, optical fiber, lumber, engineered wood, and drywall?

Yes, refer to Section 6-1.04F, "Buy America Waiver for the De Minimis Costs for Manufactured products and Construction Materials" of contract special provisions.

17. Does the previous minimum use allowance (non-domestic sources) for iron and steel still apply?

Yes, the greater of either 0.1 percent of the total bid amount or \$2,500, is the maximum value of non-domestic steel and iron that may be authorized in advance by the resident engineer for use during the construction project. The cost of such material is based on the material cost as delivered to the project. Note that this allowance is separate from any other project material or product that may have received a Federal Highway Administration waiver, which would be identified in the contract provisions if applicable.

18. Does the minimum use allowance (non-domestic sources) for iron and steel extend to the additional construction materials, such as non-ferrous metals, plastic and polymer-based products, glass, fiber optic cable, optical fiber, lumber, engineered wood, and drywall?

No, this allowance is exclusive to steel and iron only.

CONSTRUCTION MATERIALS

19. What are the additional construction materials covered by the Buy America requirements from the Infrastructure Investment and Jobs Act of November 2021 as modified by the Office of Management and Budgets final guidance published to the Federal Register on August 23, 2023?

The identified additional construction materials are non-ferrous metals, plastic and polymer-based products, glass, fiber optic cable, optical fiber, lumber, engineered wood, and drywall. For applicable contracts, these contract provisions are in Section 6-1.04E, "Construction Materials," of the special provisions. These are in addition to steel and iron materials which remain covered under Buy America requirements and Section 6-1.04C, "Steel and Iron Materials," of the *Standard Specifications*, as well as the state-mandated requirements for crumb rubber from Section 6-1.04B, "Crumb Rubber (Pub Res Code § 42703(d))" of the *Standard Specifications*.

20. Section 6-1.04E, "Construction Materials," of the special provisions states that the construction materials must be produced in the United States. Does this mean that all raw materials must be sourced domestically, and all manufacturing processes must occur in the United States?

The contractual standards for determining whether a construction material produced in the United States are referenced in Section 6-1.04E and identified in the Code of Federal Regulations, Title 2, Section 184.6, (2 CFR 184.6), "Construction material standards," for each listed construction material. These are the same standards to which the manufacturer's or producer's certificate of compliance (COC) are to attest. The 2 CFR 184.6 standards cover all manufacturing processes as identified for the specific construction material. For example, the standard for non-ferrous metals states, "All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States." These standards will identify whether the construction materials' raw materials must be sourced domestically. For example, the standard for lumber states, "All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States." This means non-domestic timber may be procured for domestic lumber production so long as its initial debarking occurs domestically along with other identified manufacturing processes. Review each individual construction material's standard in 2 CFR 184.6 for such requirements.

21. Are surface treatments and coatings of construction materials in Section 6-1.04E, “Construction Materials,” of the special provisions also subject to Buy America requirements?

Individual construction materials’ standards in the Code of Federal Regulations, Title 2, Section 184.6, “Construction material standards,” identify the covered manufacturing processes for each material. Only in those cases in which the standard identifies the surface treatments or coatings, for example non-ferrous metal, will such operations be subject to Buy America requirements. It is understood that these operations are those that occur at the manufacturer’s or producer’s facilities and do not apply to field applied treatments or coatings of a construction material, however materials for field applied treatments still need to comply with Special Provisions 6-1.04.

22. If an individual construction material’s standard according to the Code of Federal Regulations, Title 2, Section 184.6, “Construction material standards,” does not cover treatments or coatings of the material, is a manufacturer coated or treated construction material then considered a manufactured product for the purposes of Buy America coverage classification?

No, in such cases the product is still considered construction material according to Section 6-1.04E, “Construction Materials,” of the special provisions, however the coating or surface treatment performed is not subject to Buy America requirements.

23. How are “minor additions” of articles, materials, supplies, or binding agents to a construction material addressed in the Buy America requirements?

The Code of Federal Regulations, Title 2, Section 184, “Buy America Preferences for Infrastructure Projects,” addresses these minor additions within Section 184.3, “Definitions.” These minor additions do not change the categorization of the item as a construction material for the Buy America requirement.

24. What type of materials comprised of non-ferrous metals would be subject to Buy America requirements?

Non-ferrous metals, such as aluminum, copper, lead, nickel, tin, titanium, zinc, brass, and bronze, are subject to Buy America if used as construction materials in various shapes, sizes, and gauges including, but not limited to sheets, channels, bars, pipe, couplers, fittings, bolts, nuts, and products comprised predominately of the non-ferrous metal itself.

25. What about an item that is primarily composed of a single non-ferrous metal, but includes other materials to complete its functional use?

If a non-ferrous metal item is combined with other dissimilar items during a manufacturing process, the product is then considered a manufactured product and is

subject to Buy America requirements. For example, if a brass body is forged for use in a gauge valve application and combined with other items of other material types, for example valve stem, needle tip, or nuts screws, the resultant item is considered a manufactured product. manufactured products in accordance with Section 6-1.04D, "Manufactured Products," of applicable contract special provisions are subject to Buy America requirements.

26. What "lumber" construction materials will be subject to the new Buy America requirements?

Buy America requirements will apply to the conventional definition of lumber that includes solid wood boards, planks, and posts.

27. Which engineered wood products will be subject to the new Buy America requirements?

The Office of Management and Budgets revised and published final guidance on Buy America requirements for construction materials to the Federal Register on August 23, 2023. This included the addition of engineered wood products such as plywood, oriented strand board, and glulam beams as construction materials. Refer to Section 6-1.04E, "Construction Materials," of applicable contract provisions.

28. Based on the conventional definitions of lumber and engineered wood products, it appears there are other wood materials that do not fall within either classification, for example timber signal poles, large beams, and wood trusses. Are such outliers subject to Buy America requirements?

Wood products that do not fall within either the lumber or engineered wood product conventional definitions will not be subject to Buy America requirements. In addition, only those lumber and engineered wood materials that are permanently incorporated into the work are subject to Buy America requirements.

29. What glass construction materials are subject to Buy America requirements?

Buy America applies to those glass construction materials that are solely comprised of glass. Buy America also applies to the glass panes that have been incorporated into a manufactured product, for example window framed product, offsite, delivered to the project, and then incorporated into the work. Refer to Sections 6-1.04D, "Manufactured Products," and 6-1.04E, "Construction Materials," of applicable contract provisions.

30. Are fiberglass products subject to Buy America requirements?

If the fiberglass product is comprised solely of fiberglass, the product is subject to Buy America requirements under construction material. If other construction materials have been incorporated during the manufacturing process, excluding minor additions, the

resultant is considered a manufactured product and is subject to Buy America requirements. Refer to Sections 6-1.04D, "Manufactured Products," and 6-1.04E, "Construction Materials," of applicable contract provisions.

31. Are glass beads used for retroreflectivity on traffic paints subject to Buy America requirements?

Glass beads are solely comprised of glass and are therefore subject to Buy America requirements. Even the high-performance glass beads used in retroreflective paint are considered glass and they are classified as construction materials when delivered to the jobsite as glass beads.

32. Which of the following types of glass—float, laminated, obscured, tempered, insulated, and low-E—are required to be Buy America compliant under the construction materials definition?

Laminated and insulated glass are examples of manufactured products that involve other dissimilar construction materials being added to glass construction materials to create a modified product and are subject to Buy America requirements. If the glass consists of a single construction material and has not been manufactured into a combined product such as a window (glass pane and frame), then the glass is subject to Buy America requirements. Refer to Sections 6-1.04D, "Manufactured Products," and 6-1.04E, "Construction Materials," of applicable contract provisions.

33. What type of plastic or polymer-based items are considered construction materials and subject to Buy America requirements?

The item's material must be solely plastic or polymer to be considered a construction material. Plastics or polymers that are combined with other construction materials in a manufacturing process, excluding minor additions, are considered a manufactured product. Both construction materials and manufactured products in accordance with Sections 6-1.04D, "Manufactured Products," and 6-1.04E, "Construction Materials," of applicable contract provisions are subject to Buy America requirements. A common example of polymer-based products subject to Buy America would be high-density polyethylene or PVC pipe and fittings.

34. What about products that consist of two or more of the Buy America covered construction materials?

Once a construction material is combined with another construction material in a manufacturing process, excluding minor additions, it is considered a manufactured product. This general rule is superseded by those defined construction materials that consist of multiple construction materials, namely engineered wood, fiber optic cable, and optical fiber subcategories. Manufactured products are currently covered under Buy

America requirements in accordance with Section 6-1.04D, "Manufactured Products," of applicable contract provisions. For example, a shielded electrical conductor is considered a manufactured product.

35. How can engineered wood, fiber optic cable, and optical fiber be considered their own construction materials subcategories when they clearly consist of multiple construction materials?

The Office of Management and Budget's revised guidance has created three new subcategories of construction materials, namely engineered wood, fiber optic cable, and optical fiber. Their classification as construction materials that consist of multiple construction materials takes precedence over preliminary guidance provided by the Office of Management and Budgets.

36. If I plan to use some of the identified construction materials in Section 6-1.04E, "Construction Materials," of the special provisions, in temporary facilities or as a construction aid that will not ultimately be part of the permanent work, are such materials subject to Buy America requirements?

No, see Section 6-1.04A of applicable contract provisions.

37. For construction materials subject to Buy America requirements as identified in Section 6-1.04E, "Construction Materials," of the special provisions, what documentation is required to show compliance and receive payment?

According to Section 6-1.04E, the contractor must provide manufacturer COC with each project delivery of such materials. These manufacturer COC must identify where the construction material was manufactured and attest specifically to Buy America compliance—all manufacturing processes for these materials occurred in the United States—according to its standard in the Code of Federal Regulations, Title 2, Section 184.6, "Construction material standards." Construction materials subject to Buy America without COC or a De Minimis Waiver will not be accepted on the job and may be subject to progress payment withholding, according to Section 6-1.01, "General," of contract special provisions.

38. Does Buy America apply to existing construction materials or manufactured products that are relocated from one location on the project to another location on the project?

No, relocation of existing items falling under the construction material or manufactured products' definition are not subject to Buy America requirements. For example, a non-ferrous metal article shown to be relocated on the plans would not be a new or added construction material to the project and is not subject to Buy America requirements.

MANUFACTURED PRODUCTS AND IRON OR STEEL

39. What is considered “final assembly” for manufactured products under Buy America?

Final assembly is the last substantial step in which a manufactured product becomes a finished item ready for incorporation into the project. Final assembly must occur at a defined location in the United States to meet the Buy America requirements. For example, if all components of light-emitting diode luminaires were installed and assembled in the United States, then it would meet the Buy America requirements. However, if the internal components were installed and assembled with the housing unit at an international manufacturer, it would not meet the Buy America requirements because final assembly did not occur in the United States.

40. Which manufactured products with iron or steel are subject to Buy America requirements?

Items that are iron or steel components used in precast concrete products or enclosures for intelligent transportation systems must meet the Buy America requirements of Section 6-1.04C, “Steel and Iron Materials,” of the *Standard Specifications*. Iron or steel used in other manufactured products must meet the requirements of Section 6-1.04C if the product is predominantly composed of iron or steel (50 percent or more of the total costs). Refer to Section 6-1.04D, “Manufactured Products,” of the applicable contract special provisions.

41. How is the determination made that a manufactured product is “predominantly iron or steel”?

According to 23 CFR § 635.410(c)(1)(vi), a manufactured product is considered predominantly iron or steel when the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. This determination is based on the manufacturer who provided COC, in accordance with section 6-1.04 of the applicable contract special provisions. In addition to COC, this determination can be based on backup documentation showing the cost breakdown or the American Association of State Highway and Transportation Officials (AASHTO) Self-Certification Form. Contractors are responsible for providing the required manufacturer’s documentation and are not expected to perform independent cost breakdowns.

42. What are examples of Caltrans intelligent transportation systems components that would be subject to Section 6-1.04C, “Iron or Steel Products,” of the Caltrans *Standard Specifications*?

According to the Code of Federal Regulations, Title 23, Section 635.410(c)(2)(ii), the cabinets or other enclosures of intelligent transportation systems and other electronic

hardware systems that are installed in the highway right-of-way or other real property and classified as manufactured products must comply with Buy America requirements for iron and steel if the cabinet or enclosure is predominantly iron or steel. This makes any enclosures or cabinets of Caltrans intelligent transportation systems that are predominantly iron, or steel would be subject to Section 6-1.04C. Typical to most Caltrans projects, if the enclosure is made of non-steel or mostly non-steel components, for example aluminum, plastic, or composite, then it will fall solely under the manufactured product Buy America requirements and not the iron or steel product classification.

Some examples are sheet steel enclosures or cabinets of traffic signal systems installed at intersections, changeable message signs, closed circuit television camera systems, vehicle detection systems, ramp metering systems, tolling systems, communication infrastructure and other similar monitoring systems installed.

SELF-CERTIFICATION FORM

43. How can the AASHTO Self-Certification form be used?

The form can be used with a Certificate of Compliance as an acceptable backup documentation by confirming Build America Buy America classification, manufacturing locations, and the manufacturer's compliance. The AASHTO Self-Certification form provides a standardized, nationwide certification from the manufacturer that identifies the Build America Buy America material classification and attests that the item meets the applicable Build America Buy America requirements.

44. Does the AASHTO Self-Certification form replace COC?

No, the AASHTO Self-Certification form may not be used in place of a COC because a COC is required for a specific project reflecting corresponding components supplied for that project.

Find additional Questions and Answers for Buy America published by the Federal Highway Administration at:

https://www.fhwa.dot.gov/construction/contracts/buyam_qa_baba_post10232023.cfm

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