

**SECTION 106  
CONTROL OF MATERIALS**

**106-1.01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS.** *Replace the BUY AMERICA PROVISION with the following:*

**BUY AMERICA PROVISION.** On projects using federal funds the Contractor shall ensure all iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States as required by 2 CFR Part 184 Buy America Preferences for Infrastructure Projects and 23 CFR §635.410, Buy America requirements.

The Contractor shall submit a completed Non-Domestic Minimal Use & De Minimis Register, Form 25D-60, prior to award of the contract. When the Contractor becomes aware of a change from or error in a previously submitted Form 25D-60, the Contractor shall submit an updated Form 25D-60.

The Contractor shall submit a completed Certificate of Buy America Act Compliance Form 25D-62 for each product that is predominately steel or iron, or a combination of both, manufactured products, and construction materials incorporated into the project. The Department will not allow installation of, nor pay for, products that must comply with Buy America until the Contractor has submitted acceptable Forms 25D-60 and 25D-62.

Manufactured products that are not predominantly steel or iron, or a combination of both, or construction materials are not subject to Buy America provisions. Declare manufactured products on Form 25D-62 regardless of their exemption.

Non-domestic products in excess of the minimal use and/or the de minimis amounts shall be replaced at no expense to the State. Failure to comply may also subject the Contractor to default and debarment.

The supplier certifying Form 25D-62 may be the manufacturer, fabricator, vendor, or supplier; provided they have sufficient control and knowledge of the manufacturing process to accept responsibility and certify full and complete conformance with 23 CFR §635.410 and 2 CFR Part 184. The Prime Contractor shall also certify Form 25D-62. Provide additional certifications and backup documentation to signed Form 25D-62 when required by the Engineer. False statements may result in criminal penalties prescribed under AS 36.30.687 and Title 18 US Code Section 1001 and 1020.

The United States, Mexico, Canada Agreement (USMCA) does not apply to the Buy America requirement.

Buy America does not apply to construction materials, steel products, and iron products, brought temporarily to the construction site and removed at or before the completion of the project. Further, it does not apply to construction materials, steel products, and iron products which remain in place at the Contractor's convenience. Buy America does not apply to iron ore, pig iron, and processed, pelletized and reduced iron ore.

The following materials are exempt from Build America, Buy America requirements per Section 70917(c) of P.L. 117-58:

1. cement and cementitious materials
2. aggregates such as stone, sand, or gravel
3. aggregate binding agents or additives

**De Minimis amount:**

Small amounts of non-domestic construction materials, are allowed provided the total value of the non-domestic products is no more than the lesser of \$1,000,000 or 5% of total material costs for the project including freight to the project location.

The total material costs of the project include (Form 25D-60):

1. Predominantly Iron and Steel products
2. Construction Materials
3. Manufactured Products

Do not include the cost of materials exempted per Section 70917(c) of P.L. 117-58, earth materials, processed aggregates, asphalt, concrete, fuel, lubricant, equipment repair parts, etc. in the total material costs of the project.

**PREDOMINANTLY STEEL OR IRON PRODUCTS.** Products and materials where the cost of the iron and steel, or a combination of both, exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product, or a good faith estimate of the cost of iron or steel components.

To be classified as domestic, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Iron and Steel minimal use:

All predominately steel and iron, or a combination of both, products incorporated into the work, shall be manufactured in the United States except that minor amounts of steel and iron products of foreign manufacture may be used, provided the aggregate cost of such does not exceed one tenth of one percent (0.001) of the total contract amount, or \$2,500, whichever is greater. For the purposes of this paragraph, the cost is the value of the products as they are delivered to the project, including shipping.

**CONSTRUCTION MATERIALS.** The following list contains the categories of construction materials, and the requirements for domestic origin. Construction materials are an article, material, or supply that is:

1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2. Plastic and Polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3. Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4. Fiber Optic Cable. All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
5. Optical Fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
6. Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
7. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
8. Engineered Wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

If one construction material contains as inputs other construction materials, it remains classified as a construction material for the purposes of this section. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

**MANUFACTURED PRODUCTS.** Articles, materials, or supplies that have been processed into a specific form and shape or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

If an item is classified as an iron or steel product, a construction material, or an exempted material per Section 70917(c) of P.L. 117-58 then it is not a manufactured product.

An article, material, or supply classified as a manufactured product may include components that are construction materials, iron or steel products, or an exempted material per Section 70917(c) of P.L. 117-58.

Delete 106-1.01, paragraph 4, and substitute the following:

The contractor shall submit a certificate of compliance according to Subsection 106-1.05 for each item listed on the Material Certification List. The Engineer may authorize the use of materials based on a certificate of compliance and Form 25D-62 Certificate of Buy America Act Compliance. Materials incorporated into the project on the basis of a certificate of compliance may be tested at any time, whether in place or not, and, if they do not conform to Contract specifications, they may be rejected and ordered removed under the Subsection 105-1.11.

Delete the first four paragraphs of 106-1.05 and substitute the following:

A certificate of compliance must meet one of the following:

1. If by manufacturer's certification, the certificate must include the project name and number, the signature of the manufacturer, and must include information that clearly demonstrates the material or assembly complies with all Contract requirements except for domestic preference.
2. If by Contractor's summary sheet, the summary sheet must include the project name and number, the signature of the contractor, and must include attached documentation that clearly demonstrates the material or assembly fully complies with all Contract requirements except for domestic preference.