

Appendix B

Types of Items and Guidance

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NOTE: Within this appendix, FHWA quotes and guidance may not be in the same order when compared to the guidance document. In addition, select quotes and/or guidance can be found in Appendix A and Appendix C.

I. Minimum use threshold

[Buy America Questions and Answers \(12/20/2012\)](#)

Q# 9. What is the FHWA's minimum threshold for Buy America to apply?

A# 9. Per regulation, the FHWA's minimum threshold for Buy America to apply is \$2,500 (the total amount of iron and steel products as delivered to the project) or 0.1% of the total contract amount, whichever is greater.

II. Overseas manufacturing and assembly of items

A. Recycled steel

[Buy America Questions and Answers \(12/20/2012\)](#)

Q# 13. Does Buy America apply to recycled steel?

A# 13. No. Although raw materials used in the steel manufacturing process may be imported, all manufacturing processes to produce steel products must occur domestically, including the addition of additives and the application of coatings. However, raw materials such as iron ore, limestone and waste products are not covered. The [FHWA's November 25, 2013 final rule](#) defined waste products to include scrap as steel that is no longer useful in its present form (e.g. steel from old automobiles, machinery, pipe, railroad tracks, etc.).

B. Non-domestic manufacturing and fabrication

[Buy America Requirements \(07/06/1989\)](#)

All manufacturing processes of the steel material in a project (i.e., smelting, and any subsequent process which alters the steel material's physical form or shape or changes its chemical composition) must occur within the United States to be considered of domestic origin. This includes processes such as rolling, extruding, machining, bending, grinding, and drilling.

[Buy America Questions and Answers \(12/20/2012\)](#)

Q# 30. When a domestic steel product leaves the country for non-domestic fabrication, how should I calculate the value of non-domestic content?

A# 30. Fabrication is a manufacturing process that must take place in the United States. If a domestic steel product leaves the country for non-domestic fabrication, the entire steel product becomes foreign steel.

Q# 46. Does Buy America apply to domestic iron/steel products purchased by contractor and shipped overseas for use in physical assembly (i.e. reinforcement bars for formation of concrete pipes, and shapes)?

A# 46. No. Buy America does not apply to iron/steel products shipped overseas strictly for physical assembly. Note that if any of the manufacturing process (bending, extruding, drilling, coating etc.) occurs on the domestic iron/steel product while overseas, the resulting product becomes foreign and does not conform with Buy America requirements.

C. Coatings

[Buy America Questions and Answers \(12/20/2012\)](#)

Q# 14. Do Buy America requirements apply to coating materials and the process of applying a coating?

A# 14. Yes. Section 1041(a) of the 1991 Intermodal Surface Transportation Efficiency Act expressly provides that the application of a coating for iron or steel is subject to Buy America. In 1993, the FHWA amended its regulations at 23 CFR 635.410(b)(1) to implement ISTEA section 1041(a) to clarify that the manufacturing process for the application of a coating is covered by Buy America requirements; however, the material being applied as a coating is not covered under Buy America. A coating means any process that protects or enhances the value of a material or product to which it is applied, such as epoxy coatings, galvanizing or painting.

D. Non-domestic assembly

[Buy America Requirements \(07/06/1989\)](#)

Apparently, there has been some confusion as to exactly how this value should be calculated, especially when: (1) domestic steel has been shipped to a foreign country to facilitate one or more manufacturing process and/or; (2) a product has been fabricated with foreign steel components as well as other components. If steel billets produced in the United States are sent out of the country for a subsequent manufacturing process and then brought back into the United States, the full value of the steel as it re-enters the country, **including** the original billet cost, is considered to be foreign.

If foreign steel components are combined with other components into a fabricated and/or assembled composite product, the foreign steel content of the composite product is not only the value of the foreign steel components, but also the pro-rata value of the fabrication and assembly labor and overhead used in combining the foreign steel and other components into the finished composite product.

[Buy America Questions and Answers \(12/20/2012\)](#)

Q# 29. If a U.S supplier purchases foreign steel, performs domestic fabrication on the foreign steel and then supplies the fabricated product to a contractor on a Federal-aid construction project, should the cost of domestic fabrication be included as part of cost of foreign steel as delivered to the project?

A# 29. No. Since the regulation requires that all manufacturing process on iron and steel products must take place domestically, the cost of domestic manufacturing process(es) performed on the foreign iron or steel products should not be included in the value of materials as delivered to the project. However, the cost of domestic manufacturing process(es) must be clearly documented.

E. Delivery to project site

[Buy America Questions and Answers \(12/20/2012\)](#)

Q# 28. What are the costs associated with the value of iron and steel as delivered to the project?

A# 28. The total cost of iron and steel includes the cost of the material plus the cost of transportation to the project site, as evidenced by delivery receipt, but does not include labor costs involved in final assembly.

III. Welding

[Buy America Questions and Answers \(12/20/2012\)](#)

Q# 41. What is "green rod" and is it subject to Buy America coverage?

A# 41. Green rod is basically mild steel that is hot drawn and rolled with scale. It is used by welding rod manufacturers to produce welding rod. Since the green rod is typically an iron/steel product, it is covered by Buy America requirements.

Q# 42. Is welding process covered by Buy America requirements?

A# 42. Yes. All welding process must take place domestically since the welding rod itself is typically an iron/steel product and the welding process substantially alters the rod.

IV. Off the shelf items, WisDOT procured items, and donated items

[Buy America Questions and Answers \(12/20/2012\)](#)

Q# 17. Does Buy America apply if a State DOT makes the cost of eligible iron and steel products Federal-aid non-participating in construction of a Federal-aid project?

A# 17. Yes. Buy America applies to all steel and iron products supplied and permanently incorporated into a Federal-aid project regardless of the funding source actually used to purchase the product.

Q# 18. Does Buy America apply if the steel or iron for a Federal-aid funded project is procured by the State through a separate contract?

A# 18. Yes. Buy America applies to all iron and steel products permanently incorporated into Federal-aid funded project, regardless of how they were procured.

Q# 37. Does Buy America apply to iron and steel products donated by State DOT, Public Local Agency, or Contractor for construction of Federal-aid projects?

A# 37. Yes. Buy America applies to all donated iron and steel products.

Q# 21. Do Buy America apply to iron and steel products that were competitively procured in one project, for construction of a Federal-aid project?

A# 21. Yes. With accompanying certification showing that the products were manufactured domestically, if they are for permanent installation and a public interest finding as required by 23 CFR 635.407 for the use of state-furnished material.

V. Reuse of items

[Buy America Requirements Interpretation -- Ground Anchors, Soil Nails, and Geotech Instruments \(12/02/1994\)](#)

An August 1, 1990, memorandum by William A. Weseman stated that "The issue of temporary versus permanent steel [and iron] material items used during construction was addressed during rulemaking procedures following enactment of the 1982 STAA (November 25, 1983; 48 FR 53009). Steel [and iron] materials brought to the construction site and permanently incorporated into the completed project as a requirement of the contract, are subject to Federal-aid Buy America coverage. Construction materials, which remain in place at the contractor's convenience, rather than as a contract requirement, are not covered. Thus, in applying Federal-aid Buy America provisions it must be determined if steel [and iron] materials as required by contract plans or specifications [are] to be permanently incorporated into the project."

[Contract Administration Core Curriculum Manual \(dot.gov\)](#)

Buy America also does not apply to items that are simply moved from one place to another within the same project. For example, Buy America would not apply to utility poles that are merely moved from one location to another under the same project since no new or added steel or iron items are being used for the project.

VI. Temporary items

[Buy America interpretation \(06/13/2011\)](#)

The Buy America requirements of 23 CFR 635.410 apply to all steel or iron materials that are "used" or "permanently incorporated" in a project. Permanent incorporation includes items that are specified in the contract documents (or bid options specified in the contract documents) that must remain in place at the end of the project. It includes items that are impractical to remove due to design, construction staging or other functional requirements. If an item is specified in the contract documents and it is impossible or impractical to remove the item, then Buy America provisions apply.

Other steel or iron items specified in the contract documents that are not required to be permanently incorporated are considered to be temporary and not subject to coverage. This includes an item that is specified in the contract documents for one stage of the project, but for all practical purposes, may be removed during a subsequent phase (or left in place if requested by the contractor and approved by the contracting agency).

[Buy America Questions and Answers \(12/20/2012\)](#)

Q# 19. Does Buy America apply to iron and steel (sheet piling, scaffolding, etc.) products used on a temporary basis for construction of a Federal-aid project.

A# 19. No. Buy America applies only to iron and steel products required to be permanently incorporated into a Federal-aid construction project. Temporary use means that the contract specifications provide that the iron and steel products used on the project either must be removed at the end of the project or may be removed at the contractor's convenience. Also, where a contracting agency is able to document that phased construction is imminent and the steel or iron product will be removed in subsequent near term stages, then the iron or steel product may be considered temporary and not subject to Buy America. However, if the iron or steel product is required to remain in place at the end of the contract (per contract documents) and where phased construction is not imminent, then the product is deemed permanent and Buy America applies.