

MICHIGAN
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
DOMESTIC MATERIALS

CFS:JGG

1 of 5

APPR:LLR:KAS:03-19-26
FHWA:APPR:04-16-26

Delete subsection 105.10, on page 1-60 of the Standard Specifications for Construction, in its entirety and replace with the following:

105.10. Domestic Materials

An article, material, or supply will only be classified as an iron or steel product, a construction material, a manufactured product, or other products. Except as otherwise provided an article, material, or supply will not be considered to fall into multiple categories. An article, material, or supply must fall under one of the above-listed categories. The classification of an article, material, or supply as falling into one of the categories listed in this subsection will be made based on its status at the time it is brought to the work site for incorporation into the project.

- A. **Source of Iron or Steel (Buy America Act).** All references to iron and steel products means iron products, steel products, or any combination of both iron and steel.

Provide iron or steel products for permanent incorporation into the work that are produced only in the United States per Title 23 of the CFR Section 635.410, Buy America Requirements.

All iron and steel products and manufacturing processes of the iron and steel products, including but not limited to the following steps; smelting, melting, rolling, extruding, machining, bending, grinding, drilling, welding, galvanizing, and coating, must occur within the United States. Provide manufacturer and/or fabricator certifications that all iron and steel products are compliant with Buy America Act requirements unless noted otherwise in this special provision. Step certifications are not required. Certifications are required prior to incorporation of the products into the project.

Manufactured products, as defined in 23 CFR 635.410, that are predominantly iron or steel or a combination of both are considered Steel and Iron products and must comply with this special provision.

Predominately of iron or steel or a combination of both means the cost of the iron and steel content 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, sheet, etc.), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

The above requirements do not preclude minimal use of foreign iron and steel,

provided the total invoice cost of foreign iron and steel permanently incorporated into the project does not exceed 0.1 percent of the total contract amount or \$2,500 whichever is greater. The Department defines the total invoice cost as the total value of the foreign iron and steel products as delivered to the project. The Department defines the total contract amount to be the original contract amount at the time of award.

Coordinate any potential inclusion of foreign iron or steel in fabricated products with each fabricator. Department inspection of fabrication processes and products is not responsible for any foreign iron or steel product inclusion.

For each iron or steel product subject to meeting domestic materials requirements, that doesn't fully meet Buy America Act requirements, the following documentation must be provided by the Contractor to verify the foreign steel value. Ensure the threshold is not exceeded and place the documentation in the project files.

- Pay Item,
- Description of associated foreign iron or steel product, or component,
- Invoiced cost of associated foreign iron or steel product, or component, and
- Current cumulative list of all foreign iron or steel products with the total dollar amount of foreign products in relation to the total contract amount.

The minimal use of foreign iron or steel under the minimal usage threshold must be approved by the Engineer prior to incorporation into the project and any associated payment under the contract. The use of foreign iron or steel under the minimal usage threshold does not need to be approved by FHWA. This amount is not considered a waiver to the domestic materials requirements. The Contractor must ensure that the minimal usage amount is not exceeded.

- B. Source of Construction Materials (Build America, Buy America Act).** Provide construction materials for permanent incorporation into the work that are produced in the United States per Title 2 of the CFR Section 184, Buy America Preferences for Infrastructure projects.

The manufacturing processes for each construction material must occur within the United States. Each construction material is followed by a standard for the construction material to be considered Produced in the United States.

1. Non-ferrous metals. All manufacturing processes means from initial smelting or melting through final shaping, coating, and assembly;
2. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables). 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;
3. Glass (including optic glass). All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting;
4. Lumber. All manufacturing processes, from initial debarking through treatment

and planing;

5. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels;
6. Fiber Optic Cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing. All manufacturing processes also include the standards for glass and optical fiber, but not for nonferrous metals, plastic and polymer-based products, or any others;
7. Optical Fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw; and
8. Engineered Wood. All manufacturing processes, from the initial combination of constituent materials until the wood product is in its final form including from initial debarking through pressing, trimming, and sanding of glued sheets or boards.

Provide documented certification the applicable construction materials are produced and/or manufactured in the United States, meaning all manufacturing processes as noted above occurred in the United States.

- C. **Source of Manufactured Products.** Provide manufactured products for permanent incorporation into the work that are manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product per Title 23 of the CFR Section 635.410, Buy America Requirements.

In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, costs must be determined as follows.

1. Components purchased by the manufacturer: The acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued).
2. Components manufactured by the manufacturer: All costs associated with the manufacture of the component, including transportation costs as described in the immediately preceding bullet, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

Manufactured products means 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, an excluded material, or construction material, then it is not a

manufactured product. An article, material, or supply classified as a manufactured product may include components that are iron or steel products, excluded materials, or construction materials. Mixtures of excluded materials delivered to a work site without final form for incorporation into a project are not a manufactured product.

Items that consist of two or more construction materials that have been combined together through a manufacturing process, and items that include at least one construction material combined with a material that is not a construction material (including steel/iron) through a manufacturing process are treated as manufactured products, rather than as construction materials.

Manufactured products that are predominantly iron or steel must comply with subsection 105.10.A of the Standard Specifications for Construction. Final assembly for all other manufactured products must occur in the United States for the manufactured product to be considered compliant with the Buy America Act.

Precast concrete products are classified as manufactured products and must meet the requirements of 23 CFR 635.410 and subsection 105.10.C of the Standard Specifications for Construction. Components of precast concrete products that consist wholly or predominantly of iron or steel or a combination of both must also meet the requirements of subsection 105.10.A of the Standard Specifications for Construction. The cost of such components may be included in the applicable calculation for purposes of determining whether the precast concrete product is produced in the United States.

Intelligent transportation systems and other electronic hardware systems that are installed in the highway right of way or other real property are classified as manufactured products, the cabinets or other enclosures of such systems that consist wholly or predominantly of iron or steel or a combination of both must meet the requirements of subsection 105.10.A of the Standard Specifications for Construction. The cost of cabinets or other enclosures may be included in the applicable calculation for purposes of determining whether systems referred to in the preceding sentence are produced in the United States.

Provide documented certification that a manufactured product is Buy America Act compliant, meaning the manufactured product was produced in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product.

D. **Other Materials.** Articles, materials or supplies that do not meet subsection 105.10.A or 105.10.B or 105.10.C of the Standard Specifications for Construction are classified as Other Materials and do not have any domestic materials requirements. This includes the following items that are specifically categorized as other (excluded) materials per Section 70917(c) of the Infrastructure Investment and Jobs Act of 2021.

1. Cement and cementitious materials, including asphalt cements
2. Aggregates such as stone, sand, or gravel

3. Aggregate binding agents or additives

These materials do not have any requirements for domestic manufacturing.

- E. **De-Minimis Non-Compliant Construction Materials and Manufactured Products.** The requirements for construction materials and manufactured products are waived for a de minimis amount defined as when the total value of the non-compliant items is no more than the lesser of \$1,000,000 or 5 percent of total applicable costs for the contract.

The total value of non-compliant items is the value of all construction materials and manufactured products that are not compliant with subsections 105.10.B and 105.10.C of the Standard Specifications for Construction that are permanently incorporated into the contract.

The total applicable contract costs include the costs of all iron, steel, construction materials, and manufactured products used on the contract.

The 5 percent threshold of total applicable contract costs is based on the following formula.

A/B

Where:

A = the total value of non-compliant construction materials and manufactured products used in the contract; and

B = the total applicable contract costs (iron, steel, construction materials, and manufactured products).

The 5 percent threshold is based on the actual invoiced cost of the iron, steel, construction materials, and manufactured products, not an anticipated cost of those items.

Ensure the value of the non-compliant items is no more than the lesser of \$1,000,000 or 5 percent of total applicable costs by tracking the non-compliant value and provide documentation to the Engineer as requested and at project completion.