

FHWA's Buy America Q and A for Federal-aid Program

Updated January 5, 2026

Background

The FHWA's Buy America policies require a domestic manufacturing process for iron or steel products and manufactured products that are permanently incorporated in a Federal-aid highway construction project. Title 23 Section 313 provides that the Administrator may issue a waiver if, (1) the application of Buy America provisions would be inconsistent with the public interest or (2) iron or steel products or manufactured products are not produced in the United States in sufficient and reasonably available quantities which are of satisfactory quality. The statute and FHWA's regulations in 23 CFR 635.410 also waive FHWA's Buy America requirements for iron and steel at the time of contract award if a State elects to include an alternate bidding provision in the project advertisement for foreign and domestic steel and iron products, and the lowest overall bid based on using domestic products is more than 25 percent higher than the lowest overall bid based on using foreign products. Additionally, the FHWA's regulations permit a minimal use of foreign steel and iron in the amount of \$2,500 or one-tenth of one percent, whichever is greater, to be used in a Federal-aid project.

FHWA issued a [final rule](#) on January 14, 2025 that terminated FHWA's previous general waiver for manufactured products and established Buy America requirements for manufactured products with respect to Federal-aid highway projects ("Manufactured Products Final Rule"). This rule became effective on March 20, 2025. Per 23 CFR 635.410(c)(1)(vii), recipients must comply with the following standards with respect to manufactured products:

- (A) For projects obligated on or after October 1, 2025, the manufactured product must be manufactured in the United States; and
- (B) For projects obligated on or after October 1, 2026, the manufactured product must be 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 must be greater than 55 percent of the total cost of all components of the manufactured product.

Below are questions and answers pertaining to Buy America inquiries. These questions and answers were last updated March 6, 2023.

Policy

Q# 1. Where can I find FHWA's Buy America policies?

A# 1. The FHWA Buy America statutory provisions are in [23 U.S.C.313](#) and the regulatory provisions are in [23 CFR 635.410](#). For other policy and guidance links, see the [Construction Program Guide](#).

Q# 2. Can a waiver be granted for the Buy America requirements?

A# 2. Yes. Under 23 U.S.C. 313(b), a waiver of Buy America requirements may be granted if:

- (1) the application of Buy America provisions would be inconsistent with the public interest, or
- (2) iron or steel products or manufactured products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

FHWA's Buy America statute and FHWA's regulations at 23 CFR 635.410(b)(3) also waive the applicability of Buy America to iron or steel products when alternate bidding procedures are used and the lowest overall total bid based on using domestic steel is more than 25% higher than the lowest overall total bid based on using foreign steel.

Q# 3. Who may request a Buy America waiver?

A# 3. The recipient of FHWA financial assistance administering the Federal-aid project may request a project specific waiver.

Q# 4. May the FHWA issue a standing national or regional waiver?

A# 4. Yes. FHWA may issue a standing national or regional waiver if it is warranted.

Q# 5. On what basis may a nationwide waiver be granted?

A# 5. A nationwide waiver of a specific iron or steel product or manufactured product may be granted by the Secretary of Transportation if the product is not manufactured in the United States and the public rulemaking process demonstrates that non-domestic availability of the product would adversely impact the Federal-aid program in multiple states, specific regions, or nationwide.

Q# 6. Has FHWA granted any nationwide waivers?

A# 6. Yes. FHWA has granted two nationwide waivers, 1) on February 9, 1994 for ferryboat equipment and machinery parts, and 2) on March 24, 1995 for pig iron and processed, pelletized, and reduced iron ore. For more details, see <https://www.fhwa.dot.gov/programadmin/contracts/020994.cfm> and <https://www.fhwa.dot.gov/programadmin/contracts/032495.cfm>.

Q# 7. Who may request a nationwide waiver?

A# 7. A recipient of FHWA financial assistance may request a nationwide waiver.

Q# 8. How often does FHWA approve waivers based on public interest?

A# 8. Not very often. An example of when a public interest waiver may be considered could be during an emergency situation. Another example may be where a certain product is to be evaluated on an experimental basis.

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

A# 9. Per regulation, the FHWA's minimum threshold for Buy America to apply to iron or steel products 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.

Q# 10. In emergency situations, does FHWA offer any type of relief to Buy America policy?

A# 10. The Buy America requirements apply during emergency situations. However, when the responsible agency demonstrates that the application of Buy America requirements would be inconsistent with the public interest, or that the necessary iron or steel product or manufactured product is not available domestically, the FHWA may grant a waiver.

Q# 11. Can states have Buy America requirements that are more restrictive than FHWA's Buy America?

A# 11. Yes. Under 23 U.S.C. 313(d) and 23 CFR 635.410(b)(2), recipients may establish standard contract provisions requiring the use of domestic materials or products to the same or greater extent than the FHWA Buy America requirements. However, recipients cannot establish less restrictive requirements for Federal-aid funded projects.

Q# 12. Do Buy America requirements apply to manufactured products?

A# 12. Yes. FHWA applies Buy America requirements to both iron and steel products and manufactured products. These are two different categories of products with different requirements to be considered Buy America-compliant.

Project Applicability

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, 1983 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.).

Q#14. Do FHWA's Buy America requirements for steel and iron 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 to an iron or steel product is covered by FHWA's Buy America requirements for steel and iron; however, the material being applied as a coating is not covered under those requirements. A coating in this context 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.

Q# 15. Does Buy America apply to aluminum products (like aluminum light poles)?

A# 15. Yes. Buy America applies to aluminum products permanently installed into Federal-aid project obligated after November 10, 2022. Note that aluminum is part of non-ferrous metals listed as construction materials in section VIII of the [OMB memo M-22-11](#). For additional guidance, see Construction materials Q&As: [Build America, Buy America Act Q&As \(on or after October 23, 2023 and before March 20, 2025\)](#) and [Build America, Buy America Act Q&As \(on or after March 20, 2025\)](#). Aluminum products must be appropriately classified as delivered to the job site in accordance with 23 CFR 635.410(c)(2) and 2 CFR 184.4(e).

Q# 16. Can a recipient apply the Buy America requirements on an incremental basis by allowing a very small amount of foreign steel to be used as the work progresses?

A# 16. No. Recipients cannot apply Buy America requirements on an incremental basis. A recipient must track the amount of incorporated foreign steel and iron as the work proceeds to ensure that the minimal use threshold amount is not exceeded at any point in the contract (0.1% of the total contract amount or \$2,500 whichever is greater).

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

A# 17. Yes. Buy America applies to all iron or steel products and manufactured 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 iron or steel product or manufactured product is procured by the State through a separate contract?

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

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

A# 19. No. Buy America applies only to iron or steel products and manufactured products required to be permanently incorporated into a Federal-aid construction project. Temporary use means that the contract specifications provide that the iron or steel products and manufactured 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 iron or steel product and manufactured product will be removed in subsequent near term stages, then the iron or steel product and manufactured product may be considered temporary and not subject to Buy America. However, if the iron or steel product and manufactured 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.

Q# 20. Can a recipient transfer a Buy America waiver granted for an item from one Federal-aid project to another Federal-aid project (i.e., utilize an approved waiver on multiple projects)?

A# 20. No. Buy America waivers are approved on a **project-by-project basis** and they are not transferable. Therefore, a waiver that is approved for one particular project cannot be used on another project. Only a nationwide waiver can be used for multiple projects.

Q# 21. Does Buy America apply to iron or steel products and manufactured products that were competitively procured in one project, and State wants to use for construction of another Federal-aid project?

A# 21. Yes. With accompanying certification showing that the products are Buy America-compliant, 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.

Waivers

Q# 22. What does the FHWA need in order to consider a project waiver request?

A# 22. The recipient of FHWA financial assistance administering Federal-aid project submits the waiver request with supporting information to the FHWA Division Office. The Division Office is responsible for ensuring that the request includes the necessary information before the information is submitted to the Office of Infrastructure and Office of Chief Counsel. Relevant supporting information includes the following information:

- the project number
- Recipient name and Unique Entity Identifier (UEI)
- financial assistance listing name and number for the Federal program providing the funds to the project for which a waiver is sought
- Federal financial assistance program name for the Federal program providing the funds to the project for which a waiver is sought
- Federal Award Identification Number (FAIN) (if available) of the project
- project description and location
- project cost
- waiver type (nonavailability, unreasonable cost, or public interest)
- waiver item(s), including name, cost, country/countries of origin (if known), and relevant Product and Service Code (PSC) and North American Industry Classification System (NAICS) code for each item
- cost of waiver item
- Federal financial assistance funding amount
- total estimated infrastructure expenditures, including all Federal and non-Federal funds
- country of origin of the product (if known at the time)
- reasons for the waiver request
- a description of the efforts made by the recipient to locate a domestically manufactured product and avoid the need for a waiver. Such a description may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation. Market research, where applicable, should include relevant details, including who conducted the market research, when it was conducted, sources that were used, and the methods used to conduct the research
- an analysis of re-design of the project using alternate or approved equal domestic product
- anticipated impact if no waiver is issued

- Supplier Scouting results through the National Institute of Standards and Technology's Manufacturing Extension Partnership (NIST-MEP)

Q# 23. Has FHWA denied any waiver request?

A# 23. Yes. If FHWA discovers a domestic product during the review of waiver request, the request will be denied. See <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm> for Buy America waiver requests denied.

Q# 24. How often does FHWA receive and approve waivers based on non-availability?

A# 24. FHWA frequently receives Buy America waiver requests and conducts preliminary reviews on each to ensure that the waiver request is warranted before it is formally processed. FHWA approves most waiver requests that are formally processed because they are usually thoroughly vetted before being submitted for approval.

Q# 25. What is the process for submitting a waiver request?

A# 25. The recipient of FHWA financial assistance administering the Federal-aid project is responsible for submitting a waiver request to the FHWA Division Office for preliminary reviews and recommendations. The Division Office will then forward the request to FHWA's Office of Infrastructure for formal in-depth review and coordination with the Made in America Director's office for a final decision.

Q# 26. Is a waiver necessary for an item that would otherwise be non-participating?

A# 26. Yes. A Buy America waiver request is necessary for all non-compliant iron or steel products and manufactured products permanently incorporated into a Federal-aid project even if there is no Federal funding involved in the purchase of the iron or steel products and manufactured products.

Q# 27. What process does the FHWA follow once a waiver request has been submitted to the Office of Infrastructure?

A# 27. FHWA's process for reviewing a Buy America waiver request is posted at <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm> in compliance with 23 U.S.C. 313(g) and SAFETEA-LU Technical Corrections Bill (Public Law No. 110-244, Section 117).

Counting the Value of Domestic/Foreign Steel

Q# 28. For purposes of the exception in 23 CFR 635.410(b)(4) to FHWA's Buy America requirements for steel and iron, 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.

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 for purposes of the exception in 23 CFR 635.410(b)(4) to FHWA's Buy America requirements for steel and iron?

A# 29. No. Since FHWA's Buy America requirements for steel and iron generally require that all manufacturing process on iron or 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.

Q# 30. When a domestic steel product leaves the country for non-domestic fabrication, how should I calculate the value of non-domestic content for purposes of the exception in 23 CFR 635.410(b)(4) to FHWA's Buy America requirements for steel and iron?

A# 30. Fabrication is a manufacturing process that must take place in the United States to comply with FHWA's Buy America requirements for steel and iron. If a domestic steel product leaves the country for non-domestic fabrication, the entire steel product becomes foreign steel.

Q#31. How should I interpret "total contract cost" if the contract cost changes from what was estimated at the beginning of the project?

A#31. The total contract cost represents the final contract cost, including any modifications due to change orders. Recipients should track the total contract cost to make sure that the de minimis threshold in 23 CFR 635.410(b)(4) is not exceeded. If the threshold is exceeded, for instance because of a change order, recipients must request and receive a waiver for all non-compliant iron or steel products permanently incorporated into the project to be Buy America-compliant.

Other Applicabilities

Q# 32. What Buy America requirements apply to projects funded with ARRA TIGER I funding?

A# 32. For TIGER I grant projects funded solely with TIGER I funds, ARRA Section 1605 applies. Title XII of the Recovery Act specifically provides that ARRA-funded highways are to be administered as if apportioned under chapter 1 of title 23, United States Code. Accordingly, ARRA-funded highway projects are administered in accordance with the requirements of title 23, United States Code, including the provisions of Buy America at 23 U.S.C. 313. The implementing regulations are in 2 CFR Part 176, Subpart B. For FHWA TIGER I grant projects funded with either Title 23 funds or regular apportioned ARRA funding, 23 U.S.C. 313 applies. The implementing regulations are in 23 CFR 635D. See PO-10 of the ARRA Q&As (<https://www.fhwa.dot.gov/economicrecovery/qandas.htm#a4>).

Q# 33. What Buy America requirements apply to projects funded with TIGER II funds?

A# 33. FHWA projects funded solely with TIGER II funds, or a combination of TIGER II and Title 23 funds, shall apply the 23 U.S.C. 313 requirements if the project is to construct or reconstruct a highway.

Q# 34. Are there differences between Buy America requirements of 23 U.S.C. 313 and Buy American requirements of 41 U.S.C. 10a - 10d?

A# 34. Yes. Buy America requirements apply to Federal-aid projects, while the Buy American requirements apply to direct Federal procurement contracts.

Q# 35. Can you apply Buy American provisions to Federal-aid projects?

A# 35. No. Buy American provisions do not apply to Federal-aid projects. Buy American provisions apply to direct Federal procurement contracts using the Federal Acquisition Regulations. However, if a Federal agency is acting as the direct contracting entity for a project involving Federal-aid funding, such as an arrangement between a State DOT and a FHWA Federal Lands Division Office, the project will be procured pursuant to the FAR and Buy American will apply.

Q# 36. Do NAFTA (USMCA), WTO Agreement on Government Procurement, or other international trade agreements affect the Buy America requirements applicable to the Federal-aid Highway Program?

A# 36. No. The NAFTA (USMCA) agreement expressly exempts grants, loans, cooperative agreements, and other forms of Federal financial assistance from its coverage. The WTO Agreement on Government Procurement, and most other free trade agreements, specifically exclude highway and mass transit projects from coverage. For U.S. international obligations see: <https://ustr.gov/issue-areas/government-procurement/us-obligations-under-international-agreements>.

Q# 37. Do Buy America provisions apply to Federal-aid construction projects that are not considered to be highway construction?

A# 37. Yes. All iron or steel products and manufactured products that are permanently incorporated in a Title 23-funded project are covered by Buy America requirements. The coverage for Title 23 eligible projects includes projects that may not have been historically considered to be highway construction (e.g., harbor cranes, bicycle racks, railroad stations, trains, motor vehicles, etc.).

Q# 38. Does Buy America apply to iron or steel products and manufactured products donated by recipients of FHWA financial assistance or their contractors for construction of Federal-aid projects?

A# 38. Yes. Buy America applies to all donated iron or steel products and manufactured products.

Q# 39. When a project is jointly funded by FHWA and FTA, which Buy America provisions should be used by the contracting agency?

A# 39. When a project combines funding from both the FTA and the FHWA programs, an agency should transfer the project funds to whichever agency is serving as the lead agency. When FHWA funds are transferred to FTA for a transit project, then FTA Buy America requirements apply, and when FTA funds are transferred to the FHWA for a highway project, FHWA Buy America requirements apply. For joint funded projects involving other Federal agencies where there is no established lead agency, 23 USC 313 continues to apply to the FHWA funding and other agencies' requirements apply as well.

Q# 40. For compliance purposes, when does a contractor need to provide a certification that iron or steel products and manufactured products for a Federal-aid project are of domestic products?

A# 40. Certification is required prior to permanent incorporation of iron or steel products and manufactured products into a Federal-aid project.

Q# 41. What is step certification?

A# 41. A step certification is a process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the iron or steel product certifies that their step in the process was domestically performed.

Q# 42. What is "green rod" and is it subject to Buy America coverage?

A# 42. 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 or steel product, it is covered by FHWA's Buy America requirements for steel and iron.

Q# 43. Is welding process covered by FHWA's Buy America requirements for steel and iron?

A# 43. Yes. All welding process must take place domestically since the welding rod itself is typically an iron or steel product and the welding process substantially alters the rod.

Q# 44. Does Buy America apply to work constructed by a railroad under a contract or agreement?

A# 44. Yes. MAP-21 Section 1518 requires the application of Buy America to all contracts eligible for assistance under the scope of NEPA project if Federal-aid funds were obligated after October 1, 2012 for any project (by contract or agreement) under the approved NEPA document. In that case, Buy America requirements will apply to railroad agreement/contract regardless of the funding source. The only exception is if the railroad work is ineligible for Federal-aid Highway Program funding.

Q# 45. Do Buy America requirements apply to an eligible utility contract/agreement being completed by the utility company under a State/Utility company relocation contract/agreement?

A# 45. Yes. MAP-21 Section 1518 requires the application of Buy America to all contracts eligible for assistance under the scope of NEPA project if Federal-aid funds were obligated after October 1, 2012 for any project (by contract or agreement) under the approved NEPA document. In that case, Buy America requirements will apply to utility agreement/contract regardless of the funding source (see Q&A #46 for an exception).

Additional Buy America utility guidance is located at
<https://www.fhwa.dot.gov/utilities/buyam.cfm>.

Q# 46. Do the Buy America requirements apply to the relocation of utilities necessitated by a highway improvement project where State law, does not allow the State DOT to reimburse the utility for relocation costs?

A# 46. No. When State law prohibits State DOTs from reimbursing utilities, 23 U.S.C. 123(a) prohibits Federal-aid participation. Such work is then not subject to Buy America requirements.

Additional Buy America utility guidance is located at <https://www.fhwa.dot.gov/utilities/buyam.cfm>.

Q# 47. Does Buy America apply to domestic iron or steel products purchased by a contractor and shipped overseas for use in physical assembly (i.e., reinforcement bars for formation of concrete pipes and shapes)?

A# 47. No. Buy America does not apply to iron or 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 or steel product while overseas, the resulting product becomes foreign and does not conform with FHWA's Buy America requirements for steel and iron.

Q# 48. In using the alternate bid procedure mentioned in 23 CFR 635.410(b)(3), is the comparison for the 25% differential based on the value of the total iron or steel products in each bid?

A# 48. No. The comparison must be between the total lowest bid using domestic iron or steel product and the total lowest bid using foreign iron or steel product. Note that if the state elects to use alternate bid provisions, all bidders must be required to submit a bid based on furnishing domestic iron or steel products. The contract must be awarded to the bidder who submits the lowest total bid based on furnishing domestic iron or steel products, unless this bid is more than 25% higher than the total bid based on using foreign iron or steel products.

Q# 49. How does FHWA resolve an after-the-fact discovery of an inadvertent incorporation of foreign iron or steel products or foreign manufactured products into a Federal-aid project?

A# 49. For resolving an after-the-fact discovery of incorporated foreign iron or steel products exceeding the minimal use amount (the greater amount of \$2,500 or 0.1% of the contract value) or foreign manufactured products, FHWA will review the following information to determine the appropriate resolution:

- i. The state's material certification procedures for determining Buy America compliance.
- ii. Degree of diligence by the State DOT and contracting agency in ensuring Buy America compliance.
- iii. Contract provisions prescribing Buy America requirements.
- iv. Availability of domestic iron or steel products, manufactured products, or their equivalent at the time when excess foreign iron or steel products and manufactured products were incorporated into the project.
- v. Issues associated with removal and replacement with domestic iron or steel products or domestic manufactured products during construction/completion.

With the Headquarters' concurrence, available options based on the conclusion of the reviews include the following:

- a. Remove the excess foreign iron or steel products or manufactured products and replace with domestic iron or steel products or manufactured products.
- b. Make the non-compliant products Federal-aid non-participating.
- c. In instances where there is evidence of carelessness, negligence, incompetence, or understaffing on the part of the contracting agency, the Division Office may determine that all project costs are ineligible.