



**Buy America**

## Final Rule on Manufactured Products



---

- The Final Rule terminates the FHWA's general applicability waiver for manufactured products
- Establishes new requirements for manufactured products used in Federal-aid highway projects
- Establishes transition dates for phasing-in the new standards for manufactured products

The waiver for manufactured products had been in place since 1983.

The original Buy America regulations covered Iron & Steel and manufactured products.

## Final Rule on Manufactured Products

- Modifies 23 CFR 635.410:
  - With two express exceptions, requires classification of an article, material, or supply only as an iron or steel product, a manufactured product, or other products as specified by law or in 2 CFR Part 184 for projects
  - Essentially, all materials on a project are classified into only one category, or *bucket*
    - Based on their status at the time they are brought to the work site for incorporation into the infrastructure project

An article, material, or supply shall only be classified into one category based on its status at the time it is brought to the worksite for incorporation into an infrastructure project, with just two exceptions, discussed later.

23 CFR 635.410 = Buy America

2 CFR Part 184 = Build America, Buy America (BABA)

## Bucket 1 – Iron or Steel Products

---

**“Iron or steel products”** are defined as articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both

FHWA further defined **“predominantly of iron or steel or a combination of both”** as a material where the cost of the iron and steel content exceeds 50 percent of the total cost of all its components

If something is wholly or predominantly iron and/or steel, it is classified as an “iron or steel product”

## Bucket 2 – Manufactured Products

---

**“Manufactured products”** defined as 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

Little easier to define after going through construction materials and excluded materials (the next two buckets). Combinations of these = manufactured products.

## Bucket 3 – Construction Materials

---

- Non-Ferrous metals
- Plastic & polymer-based products
- Glass, including optical glass
- Fiber optic cable, including drop cable
- Optical fiber
- Lumber
- Engineered wood
- Drywall

List has not changed.

Requirements for these to be considered “produced in the United States” are in the SDDOT specifications (and 2 CFR Part 184)

Classification, again, is based on the status at the time the material or product is brought to the work site.

## Bucket 4 – Section 70917(c) / Excluded Materials

---

**Excluded materials** are the same as BABA section 70917(c) materials as defined in 2 CFR 184.3:

- Cement and cementitious materials;
- Aggregates such as stone, sand, or gravel; or
- Aggregate binding agents or additives

Excluded materials are not subject to any applicable Buy America standard (steel or iron product, manufactured product, or construction material) if delivered to the project site on their own or in combination with other excluded materials.

Mixtures of excluded materials delivered to a work site without final form for incorporation into a project must not be classified as manufactured products and are not subject to FHWA's Buy America requirements for manufactured products. To fit this exception, a mixture of excluded materials must be delivered to the work site without final form, such as with wet concrete or hot mix asphalt that has not dried or set before reaching the work site. FHWA considers such mixtures to not be manufactured products, though it may also contain minor additions of other materials.

Once an excluded material has been combined with a non-excluded material and processed into a specific shape or form, the new product is to be classified the same as any other material, regardless of the fact that one of its components is an excluded material. For instance, precast concrete may comprise cement, water, aggregates, and steel. When delivered to the work site, the precast concrete would be considered a manufactured product, unless the cost of the steel content exceeds 50 percent of the total cost of the precast concrete's components, in which case it would be classified as an iron or steel product. The fact that precast concrete may include cement and aggregates, two excluded materials, is not relevant to this classification because those excluded materials are combined with other non-excluded materials.

## The Bucket 2 Exceptions

### **ITS / Electronic Hardware Systems**

ITS and other electronic hardware systems installed in the highway ROW or other real property and classified as manufactured products:

- Cabinets or other enclosures made of iron or steel must also meet Buy America requirements for iron and steel

### **Precast Concrete Products**

For precast concrete products classified as manufactured products:

- The iron and steel components must also meet Buy America requirements for iron and steel

Precast concrete and ITS products that are classified as iron or steel products (so greater than 50% to cost of components are iron or steel) must be treated as iron or steel products and are only subject to FHWA's Buy America requirements for steel and iron

## Manufactured Product Kits

A kit is a product acquired from a single manufacturer or supplier as separate components with the intent of the components being assembled to form a single product at the work site

The kit is evaluated as a single manufactured product subject to the Final Assembly requirement (or in future 55% requirement)

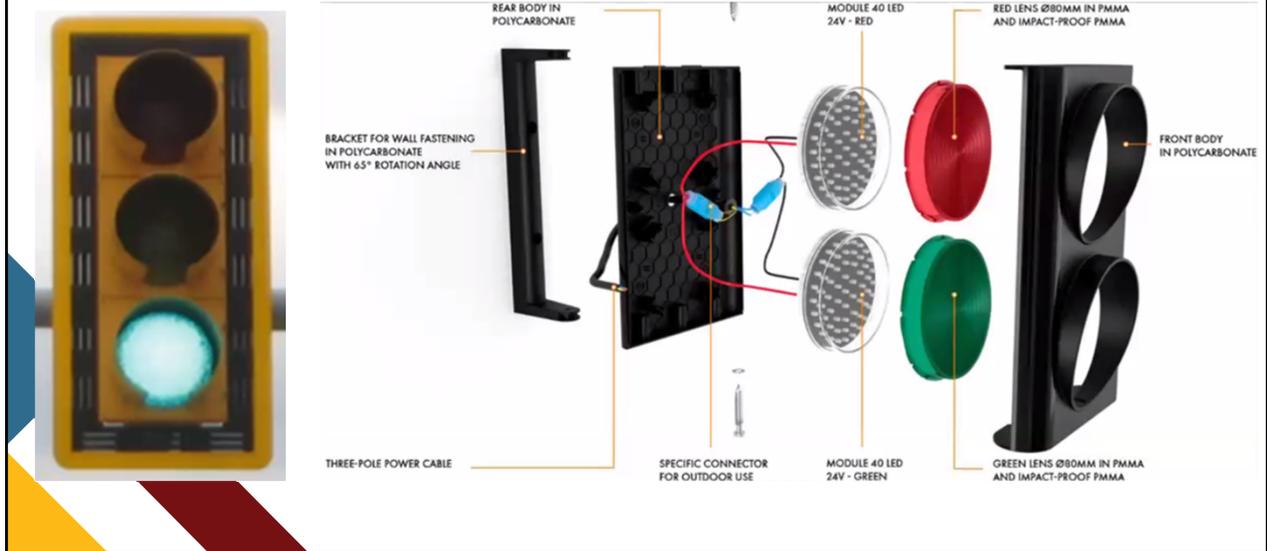
Kits = discrete products with a unified function  
(see traffic signal head example on next slide)

Kits ≠ systems; interconnected individual items that contribute to achieve a broad function  
(the example the USDOT gives is an HVAC system)

Individual components of the kit should not be classified as separated manufactured products, even though they may be brought to the work site separately.

On the other hand, if a contractor procures the traffic housing housing and the traffic lens separately from two different suppliers, brings them to the work site, and then combines them together at the work site, the housing might be classified as a manufactured product (or an iron or steel product depending on its iron or steel content), and the lens might be classified as a construction material.

## Kit Example



If the products for the traffic signal head all come from a single manufacturer or supplier, whether they come to the work site at the same time or not, would constitute a “kit” and be treated as a single manufactured product.

The manufacturer of a kit classified as a manufactured product should be considered the entity that performs the final manufacturing process that produces the kit, not the contractor that manufactures or assembles it on the work site. To comply with the final assembly requirement, the place at which the manufacturer of the kit brings together the kit’s components must be in the United States.

## Final Assembly Requirement



---

For projects obligated on or after October 1, 2025, all manufactured products permanently incorporated into the project must be manufactured in the United States

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.

Currently, being manufactured in the United States means final assembly occurs in the United States. This does not mean that something can be shipped to the U.S., disassembled and reassembled to constitute “final assembly”

SDDOT will try to coincide the update to the 55% rule with the update of the spec book.

# Certification

Certification is required prior to permanent incorporation into the project

SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION  
**MISCELLANEOUS MATERIALS BUY AMERICA CERTIFICATE**

COUNTY \_\_\_\_\_ PCN/PROJECT \_\_\_\_\_  
CONTRACTOR \_\_\_\_\_ ADDRESS \_\_\_\_\_  
SUBCONTRACTOR \_\_\_\_\_ ADDRESS \_\_\_\_\_  
SUBMITTED BY \_\_\_\_\_

I hereby certify that all items or materials used in the construction of the above-mentioned contract, for which Buy America compliance is not explicitly stated on another form of certification, comply with the Buy America requirements as set forth in the contract plans, working drawings, specifications, and applicable state and federal regulations.

I further acknowledge and affirm that by signing this certification as the prime Contractor, my company is responsible for maintaining complete and accurate documentation demonstrating compliance with the Buy America requirements. In accordance with the SDDOT Materials Manual, the Buy America certification for material used on the project must be readily available and provided upon request for any audit, review, or verification conducted by the SDDOT, the Federal Highway Administration (FHWA), or any other authorized agency.

The following items or materials used in the construction of the above-mentioned contract do not meet the Buy America requirements and do not require separate certification. For each item listed below, an invoice must be provided. These items will be subject to the provisions outlined in **Section 6.9 F.2 of the SDDOT Standard Specifications for Roads and Bridges**, which governs the use and approval of non-compliant miscellaneous materials.

Bid Item	Component Description	Qty/Units	Manufacturer	Heat or Lot Number as Applicable	Invoice number	Cost

SDDOT has a form online (Inside SDDOT > Forms & Publications > Forms) called the Miscellaneous Materials Buy America Certificate. This form is to be used for all products requiring Buy America compliance that do not have another form of certification, such as a mill cert.

The form is certifying that all other products requiring compliance on the project meet the applicable standards.

The form is signed by the Prime Contractor and acknowledges responsibility to maintain documentation for compliance.

If there are materials that do not meet Buy America requirements, they must be listed on the form and an invoice provided. Reference is made to Section 6.9 F.2 of the specs which governs use and approval of non-compliant items.

<b>Domestic Materials Self-Certification Form</b>	
<p>This certification is for a manufacturer/supplier to certify the below articles, materials, or supplies are in compliance with the applicable domestic material content procurement preferences found in the Buy America Act requirements (23 CFR 635.410) and the Build America, Buy America Act (BABA) requirements (2 CFR part 184). The individual completing this form takes full responsibility for the information included in the form. State agencies have the authority to request additional details related to the information provided in the form. All forms shall be submitted via AASHTO DataMine for delivery to authorized governmental users through the Industry Document Repository. The manufacturer/supplier is required to include updates to process changes within 10 days of the change occurring via uploading a revised form into DataMine.</p>	
<b>PART 1: COMPANY CONTACT INFORMATION</b>	
Company/Producer/Manufacturer Name:	
Supplier Representative Name:	
Contact Email Address:	Contact Phone Number:
Date Form is Being Submitted: mm/dd/yyyy	
<b>PART 2: DETAILS OF THE ARTICLE, MATERIAL, OR SUPPLY:</b>	
<p>Using Table 1 below, provide the classification of the article, material, or supply as one of the following: (1) iron or steel product; (2) construction material (3) manufactured product; or (4) excluded materials including Section 70917(c) materials.</p>	
Classification	
Producer of the Article, Material, or Supply:	
Product/Model/Part/Material:	
Manufacturing Address:	
Manufacturing City:	
Manufacturing State:	
Manufacturing Zip Code:	
DataMine # (if applicable):	
Federal/State/Local Project number(s):	
Pay Code Number (PCN):	

**AASHTO Datamine Industry Document Repository (IDR) Form**

For a manufacturer/supplier to certify materials or supplies are in compliance with the applicable domestic material content procurement preferences found in the Buy America Act requirements (23 CFR 635.410) and the Build America, Buy America Act (BABA) requirements (2 CFR part 184).

<https://transportation.org/product-evaluation-and-audit-solutions/>

There is also a national repository for products that manufacturers or suppliers want to certify they meet Buy America.

Go to the web address here or search “AASHTO Datamine IDR form.” There are guides for industry and state agency users.

Encourage suppliers and manufacturers to do this, which would constitute documentation of the product’s compliance.

## Unavailability of Materials

- If the Contractor discovers a Buy America compliant item does not exist or an item becomes unavailable, the Contractor will immediately notify the Department.
- The Contractor will furnish written documentation of the Contractor's complete efforts to obtain a compliant item.
  - This documentation will include a complete contact log with dates and times of the Contractor's efforts to obtain a compliant item, the responses received, and any correspondence between the Contractor and potential suppliers of the item which demonstrate efforts to obtain a compliant item.

SDDOT specifications require proof of effort to obtain compliant materials and an actual lack of available compliant materials. Slightly higher cost, different supplier source, or a longer lead time does not grant an exception to the requirements.

## Unavailability of Materials

- If, based on review of the documentation provided, the Department determines all potential options to obtain a compliant item have been exhausted, the Department will determine the appropriate course of action.

**If you are aware of a product or material where a compliant version is unavailable, please let us know right away**

This will not be easy...obtaining a waiver for unavailability of a material takes TIME and is unlikely to be granted. It cannot be done in the middle of a project.

Before a project is let or advertised or even during advertisement and prior to bidding, information on known issues procuring compliant materials should be submitted.

## Unavailability of Materials

- If the non-compliant item is not permanently incorporated into the completed work, the Contractor will not permanently incorporate the item and will replace the non-compliant item with an item that complies with the Buy America requirements specified herein at the Contractor's expense

In the 2025 Specifications

## Unavailability of Materials

- If the non-compliant item has been permanently incorporated into the completed project; the Engineer, in the Engineer's discretion, will determine if the non-compliant item must be removed and replaced including any completed work at the Contractor's expense or if the non-compliant item may remain in place in accordance with both of the following requirements (**de minimis**)

In the 2025 Specifications

## De Minimis

Minor quantities of non-compliant iron & steel may be incorporated in the Department's discretion based on the Department's review of the Contractor's documented invoiced material costs, provided the invoiced material costs of all non-compliant iron & steel do not exceed 0.1% of the total contract amount or \$2,500, whichever is greater.



Same de minimis as has been in the past for iron and steel materials.

Is a calculation based on the total contract amount, so only requires invoicing for the non-compliant iron or steel materials.

## De Minimis

Minor quantities of non-compliant iron & steel, manufactured (composite) products, and construction materials may be incorporated in the Department's discretion based on the Department's review of the Contractor's documented **invoiced material costs**, provided the total value of the non-compliant items does not exceed 5.0% of the **total applicable costs** for the project or \$1,000,000, whichever is less.

- Requires invoices for all materials on the project subject to Buy America requirements (from all contractors on the project)

**If you are aware of issues obtaining compliant materials in any category, please notify the department**

The de minimis that applies to manufactured products and construction materials is calculated differently.

Invoiced materials costs do not equal bid item prices

Total applicable project costs = invoiced material costs for ALL items requiring Buy America compliance on the project.

Should be reserved for when it is absolutely necessary.

## Incorporation of Non-Compliant Materials

FHWA will review the following for after-the-fact discovery of incorporation of noncompliant items:

- The State's material certification procedures for determining compliance
  - Degree of diligence by the State DOT and contracting agency in ensuring compliance
  - Contract provisions prescribing Buy America requirements
  - Availability of domestic materials or their equivalent at the time when it was incorporated into the project
  - Issues associated with removal and replacement during construction/completion
- 

20

## Incorporation of Non-Compliant Materials

FHWA Headquarters' concurrence required in selecting the following options following the review:

- Remove the non-compliant items and replace with compliant
  - Make the non-compliant items non-participating
    - Do not bank on this happening
    - Does not mean we can make items non-participating and avoid complying with Buy America requirements
  - Determine that all project costs are Federal-aid ineligible
    - Where there is evidence of carelessness, negligence, incompetence, or understaffing on the part of the contracting agency
- 

21

## Questions?

---

Christina Bennett, PE  
Construction & Maintenance Engineer  
South Dakota Department of Transportation  
[Christina.Bennett@state.sd.us](mailto:Christina.Bennett@state.sd.us)  
(605) 773-4391

22

## Webinar Q&A

What about items that do not clearly fit into the 4 buckets? Such as seeding?

- You are correct seeding does not appear to fit under any of the 4 buckets for Buy America. This and the other item we could think of that does not fit into a bucket are listed below, with the requirements they would need to comply with – these are not Buy America or BABA requirements
  - Permanent Seeding: Section 730 of the Specifications
  - Grass Hay or Straw Mulch: Section 732 of the Specifications
    - Note: Fiber Mulch, Bonded Fiber Matrix, and Fiber Reinforced Matrix would be categorized as a Manufactured Product

*Please submit any other items that may not fit into a bucket to the SDDOT*

---

23

## Webinar Q&A

We are a Steel Foundation Product manufacturer supplying H Pile, Sheet Pile, and Pipe Pile. We do not use mined ore for the production of steel but rather recycled steel and iron. Are these treated the same as “mined” products?

- Buy America compliance for recycled steel does need to be Buy America. It starts with the steel billets which must be manufactured in the U.S., but recycled steel can be used in the manufacture of the billets.



24

## Webinar Q&A

Provide example of Misc Buy America Products

- Most manufactured products and construction materials would constitute an item to be certified via the Miscellaneous Materials Buy America Certification form, as it doesn't require another form of certification in the SDDOT Materials Manual. The products are numerous but some examples are listed below:
  - Fiber optic cable, PVC conduit, glass beads, wood fence post
  - Traffic signal head, traffic signal controller, drainage fabric, permanent signing



25

## Webinar Q&A

This is still just for items incorporated into the project. If it is removed we don't have to worry about it.

- That is correct. Buy America requirements do not apply to tools, equipment, and supplies such as temporary works and other items brought to the project and removed at or before the final completion of the project.



26

## Webinar Q&A

Any project that references SDDOT Specifications will need to meet these requirements regardless of source of funding, correct? E.g., a 100% state funded project let by the Region will need to meet the requirement as well as a Local Government project referencing our specs.

- That correct as of now. Any project let through the department and referencing SDDOT Specifications would have the requirements of Section 6.9 Buy America.
  - This is how we had handled the Buy America requirements for iron and steel so that one consistent set of rules applies to materials used on our projects. We may revisit this as we see how things go and in looking ahead to the 55% requirement for manufactured products this fall.



27