

Frequently Asked Questions Concerning Buy America

Q. What are the additional construction materials covered by the new Buy America requirements from the Infrastructure Investment and Jobs Act (Nov. 2021)?

A. The identified additional construction materials are non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall. For applicable contracts, the provisions are in Section 6-1.04E, "Construction Materials." The materials are in addition to steel and iron materials, which remain covered under Buy America requirements.

Q. Which manufactured products with iron or steel are subject to Buy America requirements?

A. Iron and steel materials used in precast concrete products, regardless of the amount of steel or iron used, are subject to the requirements. For other manufactured products containing iron or steel, iron and steel content must be 90 percent or more by weight of the total manufactured product to be subject to the requirements. See Section 6-1.04D, "Manufactured Products," of the applicable contract provisions.

Q. Do the previous minimum use allowances for nondomestic iron and steel still apply?

A. Yes, the greater of either 0.1 percent of total contract amount or \$2,500 is the maximum value of nondomestic steel and iron that may be authorized in advance for use by the resident engineer during the construction phase of the project. The value of such material is based on the value as delivered to the project. Note that this allowance is separate from any other project material or product that may have received an FHWA waiver, which would be identified in the contract provisions if applicable.

Q. Does the minimum use allowance for nondomestic iron and steel extend to the additional construction materials: non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall?

A. No. Currently there is no similar minimum use allowance for these additional construction materials.

Q. Section 6-1.04 of the Special Provisions lists specific construction materials covered by Buy America requirements, but it does not list materials not subject to Buy America. If a material is not listed, is it exempt from Buy America?

A. Certain materials are exempt from Buy America requirements including cement, cementitious materials, aggregates, additives, or aggregate binding agents. Unless the material itself has been identified within your contract specifications as needing to meet Buy America requirements, the material may be procured from either domestic or nondomestic manufacturers or producers, subject to meeting other specified contract requirements.

Q. Which lumber construction materials will be subject to the new Buy America requirements?

A. Buy America requirements will apply to solid wood boards, planks, and posts. Engineered wood products such as plywood, oriented strand board, and glued laminated timber beams are not considered lumber and Buy America requirements will not apply. Timber poles are not considered lumber and will not be subject to Buy America requirements. In addition, only lumber materials that are permanently incorporated into the work are subject to Buy America requirements. Lumber used for constructing cast-in-place concrete elements is not subject to Buy America requirements, if the form materials are not permanently incorporated into the project.

Q. Do required surface treatments of lumber construction materials also need to meet Buy America requirements?

A. There is currently an absence of guidance and regulations related to how surface treatments and coatings are to be interpreted for Buy America compliance on the additional construction materials identified in Section 6-1.04E of applicable contract provisions. Caltrans will not require that these surface treatments and coatings be applied domestically in the absence of specific guidance or regulations. However, Caltrans will not consider these surface treatments and coatings as "other construction materials" for the purpose of classifying the combined material as a manufactured product.

Q. What glass construction materials are subject to Buy America requirements?

A. Buy America requirements apply to glass construction materials composed solely of glass. For example, glass panes that are incorporated into the work through assembly in the field are considered a construction material subject to Buy America requirements. However, glass panes that have been incorporated with other construction materials, such as a framed window, are classified as a manufactured product and currently not subject to Buy America requirements.

Q. Are fiberglass products subject to Buy America requirements?

A. If the fiberglass product is 100 percent fiberglass, it is subject to Buy America requirements. If other construction materials have been incorporated during the manufacturing process, the fiberglass product is not subject to Buy America requirements.

Q. Are glass beads used for retroreflectivity on traffic paints, subject to Buy America requirements?

A. Glass beads are made solely of glass; therefore, they are subject to Buy America requirements.

Q. Which of the following types of glass: float, laminated, obscured, tempered, insulated, and low emissivity, are required to be Buy America compliant under the construction materials definition?

A. Laminated and insulated glass are manufactured products that include other construction materials, so both laminated and insulated glass are not covered under the construction material definition of Buy America. If the glass consists of a single construction material and has not been manufactured into a combined product, such as a glass pane in a window frame, then the glass is subject to Buy America requirements.

Q. What type of materials made of non-ferrous metals would be subject to Buy America requirements?

A. Common non-ferrous metals, such as aluminum, copper, lead, nickel, tin, titanium, zinc, brass, and bronze, are subject to Buy America requirements if used as construction materials in various shapes, sizes, and gauges including, but not limited to sheets, channels, bars, pipe, couplers, fittings, bolts, nuts, and products made of 100 percent of the non-ferrous metal. If the non-ferrous metal is combined with other construction materials during a manufacturing process, the product is considered a manufactured product. Only manufactured products containing steel or iron in accordance with Section 6-1.04D of applicable contract provisions are subject to Buy America requirements.

Q. What type of plastic or polymer-based items are considered construction materials and subject to Buy America requirements?

A. The material must be 100 percent plastic or polymer to be a construction material. Plastics or polymers that are combined with other construction materials in a manufacturing process are considered a manufactured product. Only manufactured products containing steel or iron in accordance with Section 6-1.04D of applicable contract provisions are subject to Buy America requirements. A common example of a polymer-based product subject to Buy America would be high-density polyethylene or polyvinyl chloride pipe and fittings.

Q. What about products that consist of two or more of the Buy America covered construction materials?

A. Once a construction material is combined with another construction material in a manufacturing process, it is considered a manufactured product. Only manufactured products containing steel or iron are currently covered under Buy America requirements in accordance with Section 6-1.04D of applicable contract provisions. For example, shielded electrical conductors and fiber optic cables are considered manufactured products.

Q. If I plan to use some of the construction materials identified in Section 6-1.04E in temporary facilities or as a construction aid that will not ultimately be part of the permanent work, are such materials subject to Buy America requirements?

A. No, see Section 6-1.04A of applicable contract provisions.

Q. For the additional construction materials subject to Buy America identified in Section 6-1.04E, what documentation is required to show compliance and receive payment?

A. Pursuant to Section 6-1.04E, the Contractor must provide manufacturer certificates of compliance with each project delivery of such materials. Manufacturer certificates of compliance must identify where the material was manufactured and attest specifically to Buy America compliance, that all manufacturing processes for the materials occurred in the United States. Compliant Buy America documentation is one of the prerequisites to payment eligibility of associated bid items.

Q. Do Buy America requirements apply to construction materials that are relocated in the project to another location in the project?

A. No. Relocation of existing items falling under the construction material definition are not subject to Buy America requirements. For example, a non-ferrous metal article shown to be relocated on the plans would not be a new or added construction material to the project subject to Buy America requirements.

Q. Can change orders be issued to allow nondomestic materials or products covered by Buy America if funding for the work is kept nonparticipating by the Federal Highway Administration?

A. No. The base contract's Buy America requirements apply to change order work as well.

Q. Can I modify the Buy America requirements of my contract by change order?

A. No. The Federal Highway Administration has provided approval to use the Buy America standard special provision in accordance with its instructions. Modifying such provisions by change order may result in a finding of ineligibility notice that can affect federal aid to the subject contract as well as others associated with the contract.