

October 1, 2021

Revision of Section 106  
Buy America Requirements

**Notice**

This Standard Special Provision (SSP) revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. These are the official instructions for its use on CDOT construction projects, and have been reviewed, approved, and issued by the Construction Engineering Services Branch. Use as written without change. Do not use modified versions of this SSP on CDOT construction projects. Do not use this special provision on CDOT projects in a manner other than specified in the instructions without approval by CDOT's Standards and Specifications Unit. The instructions for use appear below.

Other agencies using the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision appropriately and at their own risk.

**Instructions for use on CDOT construction projects:**

Use this standard special provision on all federal-aid funded projects.

## Revision of Section 106 Buy America Requirements

### **106.11 Buy America Requirements.**

- (a) *Steel and Iron.* All manufacturing processes, including the application of a coating, for all steel and iron products permanently incorporated in the work shall have occurred in the United States of America. All manufacturing processes include the processes that change the raw ore or scrap metal into a finished steel or iron product. This requirement will not prevent a minimal use of foreign steel or iron, provided the total cost, including delivery to the project, of all such steel and iron products does not exceed one-tenth of one percent of the total contract cost or \$2,500, whichever is greater. When there is foreign steel or iron permanently incorporated into the project, the Contractor shall provide documentation of the project delivered cost of that foreign steel or iron.

The Contractor shall maintain on file Buy America certifications that every process from either the original smelting or melting operation, including the application of a coating, performed on steel or iron products either has or has not been carried out in the United States of America. These Buy America certifications apply to every steel and iron product that requires pre- inspection, pretesting, certified test results, or a certificate of compliance. Shipping invoices, bar lists, and mill test reports shall accompany the Buy America certifications. The Contractor shall obtain a Buy America certification from each supplier, distributor, fabricator, and manufacturer that has handled each steel or iron product. These Buy America certifications shall create a chain of custody trail for every supplier, distributor, fabricator, and manufacturer that handled the steel or iron product and shall include certified mill test reports with heat numbers from either the original smelting or melting operation. Upon request, the Contractor shall allow the State, FHWA, and their representatives access to the Buy America certifications including supporting documentation. When the Contractor does not provide the Buy America certifications at the Engineer's request, the Engineer will reject the steel or iron product.

Before the permanent incorporation into the project and before payment for steel or iron products, the Contractor shall provide an assurance document. The assurance document shall certify in writing that the steel or iron products comply with Buy America requirements; the Buy America certifications and supporting documentation are on file; and when requested, the Contractor has submitted the required documentation to CDOT. The Contractor shall maintain an assurance document that summarizes the date and quantity of all steel and iron material delivered to the project. This assurance document shall include the pay item, quantity of material delivered to the project, mill test reports with heat numbers, and the quantity of material installed by the monthly progress payment cutoff date. The assurance document shall reconcile the pay item quantities and certified mill test reports, for the material delivered to the project to the Buy America certifications and supporting documentation. The assurance documentation shall include the cost of all foreign steel or iron delivered and permanently incorporated into the project. The Contractor shall also submit a summary for each month that no steel or iron products are incorporated into or delivered to the project. The Contractor shall submit the assurance documentation to the Engineer by the monthly progress payment cutoff date.

## Revision of Section 106 Buy America Requirements

The assurance documentation does not relieve the Contractor of providing the necessary Buy America certifications and supporting documentation for steel or iron products.

- (b) *Manufactured Products.* Regulations require the use of domestic steel and iron in Federally funded construction projects. Buy America applies to construction components which are “predominantly steel or iron products,” defined by CDOT as products which are manufactured with at least 90% steel or iron content by weight when delivered to the job site for installation. FHWA provides waivers for manufactured products and products that are not predominantly steel or iron. The FHWA's 1983 [final Buy America regulations](#) waive the application of Buy America to manufactured products that do not include steel and iron components. However, Buy America applies to the steel wire mesh or steel reinforcing components of manufactured products (precast reinforced concrete elements).
- (c) *Glass Beads for Pavement Marking.* All post-consumer and industrial glass beads for pavement marking shall have been manufactured from North American glass waste streams in the United States of America. The bead manufacturer shall submit a COC in accordance with subsection 106.12 confirming that North American glass waste streams were used in the manufacture of the glass beads.
- (d) *Construction Materials.* All manufacturing processes for eligible construction materials permanently incorporated into the work shall have been manufactured in the United States of America. All manufacturing processes for construction materials consist of at least the final manufacturing process and the immediately preceding manufacturing stage for the construction material. Buy America requirements shall apply to the following eligible construction materials:
  - 1. Non-ferrous metals.
  - 2. Plastic and polymer-based products (including, but not limited to polyvinylchloride [PVC]).
  - 3. Glass.
  - 4. Lumber; or 5. Drywall

Note 1: Raw materials such as cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives are excluded from Buy America requirements.

Items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials.

October 1, 2021

## Revision of Section 106 Buy America Requirements

Before the permanent incorporation into the project for all eligible construction materials, the Contractor shall obtain a certification from each supplier. This certification must identify where the construction material was manufactured and attest specifically to Buy America compliance.

The Contractor shall maintain and submit on a monthly basis, CDOT Form #1600, Contractor's Certificate of Compliance summarizing the Item Description, CDOT Bid Item #, Manufacturer Name Identifier, Date and Quantity Received, Date and Quantity Installed, and Bid Item Unit of all eligible construction materials.

The COC does not relieve the Contractor of providing the necessary Buy America supplier certifications prior to permanent incorporation into the project. Upon request, the Contractor shall allow the State, FHWA, and their representatives access to the Buy America certifications. The lack of these certifications will be justification for rejection of the construction material.

- (e) *Waivers.* The Federal Highway Administration is responsible for processing and approving all waivers, including waivers requested by recipients and on behalf of subrecipients. More information on Buy America waivers can be found in Section 5.2 of the Field Materials Manual Special Notice to Contractors.

If a Contractor desires to pursue a waiver they shall notify the CDOT Project Engineer in writing who will then submit it to the CDOT Materials & Geotechnical Services Unit, Pavement Design and Documentation Services Program. The Pavement Design and Documentation Services Program will review it and forward it to the FHWA Division Office for consideration.

A Contractor's decision to pursue any waivers on the project shall not waive or otherwise nullify any provisions of the Contract. In addition, the time to obtain a waiver shall be considered a non-excusable, non-compensable delay and Liquidated Damages (per Subsection 108.09) will be enforced should the Contract Time (original or as-amended) expire due to the approval or non-approval of a waiver.

The Contractor will not be entitled to an extension of contract time due to the approval or non-approval of a waiver and no such claim will be considered.