

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
MATERIALS CONTROL, SOILS AND TESTING DIVISION

MATERIALS PROCEDURE

WVDOH BUY AMERICA EXCEPTION
AND WAIVER GUIDELINES

1. PURPOSE

- 1.1. To set forth instructions for Waivers and Exceptions for Buy America Materials requirements as defined in MP 106.10.50.
 - 1.2. Unless an exception or waiver exists, materials must meet all requirements of MP 106.10.50.
-

2. REFERENCED DOCUMENTS

- 2.1. MP 106.10.50 – WVDOH Buy America Acceptance Guidelines.
 - 2.2. [West Virginia Code | §5A-3-56](#)¹
 - 2.3. [West Virginia Code | §5-19](#)²
-

3. DEFINITIONS

- 3.1. Buy America Exception: A Buy America Exception is when, if certain conditions are met, the contractor may incorporate foreign materials without regard to the restrictions of the Buy American statute.
 - 3.1.1. General Applicability Waiver (General Waiver): General Waivers are exclusions that apply generally across multiple projects. A general applicability waiver can be “product-specific” (e.g., applies only to a product or category of products) or “non-product specific” (e.g., applies to all “manufactured products”).
 - 3.1.2. Project Specific Waiver: The Project-Specific Waivers are exclusions 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. WVDOH may request a project-specific waiver based on non-availability or inconsistent with Public Interest.
-

4. SCOPE

- 4.1. For each Buy America required material as described in MP 106.10.50, a separate waiver and/or exception process is described.

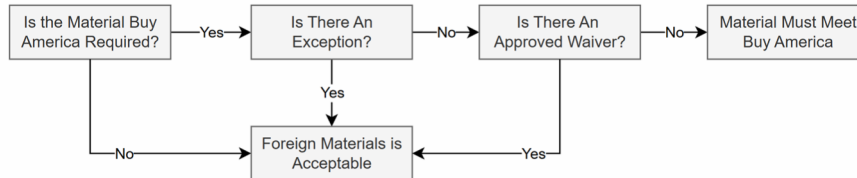
¹ http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?billdoc=hb2207%20intr.htm&yr=2001&sesstype=RS&i=2207

² <https://code.wvlegislature.gov/5-19/>

These Buy America required materials are as follows:

1. Steel and Iron
 2. Manufactured Products
 3. Construction Materials
- 4.2. If the material does not meet the requirements for an Exception as specified in Section 5, under certain circumstances a waiver may be granted. These waivers are specified in Sections 6-9.
- 4.3. If the material is Buy America required and neither an exception or nor waiver exists, the material must meet the requirements of MP 106.10.50.
- 4.4. A flowchart of the process is shown in Figure 1:

Figure 1: Overview of Buy America Exceptions and Waivers



5. OVERVIEW OF BUY AMERICA EXCEPTIONS

- 5.1. The Federal Minimal Use Exception may be granted for Steel and Iron Materials.
- 5.1.1. As provided for in 23 CFR 635.410(b)(4), an exception from Federal Buy America requirements exists for the minimal use of steel and iron materials “if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. For the purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project”.
- 5.2. There are no Buy America exceptions for Manufactured Products or Construction Materials.
- 5.3. If these conditions are not met, foreign material shall not be used on a project unless a waiver is granted. The conditions for these waivers are described in the following sections for each of the Buy America required materials.

6. OVERVIEW OF BUY AMERICA WAIVERS

- 6.1. In certain circumstances, waivers (either General or Project-Specific) may be applied to materials exempting them from both Federal and State Buy America requirements.
- 6.2. These are described in the following sections for each of the Buy America required materials.

7. BUY AMERICA WAIVERS FOR STEEL AND IRON

- 7.1. If the contractor chooses to use foreign material for steel and iron and no exception applies, both Federal and State laws require Buy America waivers. These waivers are independent of each other. Compliance and acceptance of one waiver does not in any way shape or form demonstrate compliance with the other waiver.
- 7.2. General Waiver:
- 7.2.1. There are no General Waivers for Steel and Iron.
- 7.3. Project-Specific Waiver:
- 7.3.1. Federal Requirements
- 7.3.1.1. A Project-Specific Waiver from Federal Buy America requirements for steel and iron materials may be requested for the following instances:
- (1) Public Interest: the application of Buy America requirements would be inconsistent with the public interest; or
 - (2) Non-Availability: steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.
- 7.3.1.2. If a contractor wishes to apply for a Project-Specific Waiver, they will contact the WVDOH with justification and relevant supporting information. If found acceptable, this will be sent to FHWA for approval.
- 7.3.2. State Requirements
- 7.3.2.1. As provided for in H.B. 2207, West Virginia Code | §5A-3-56, the Director of the West Virginia State Purchasing Division may authorize in writing the use of a Project-Specific Waiver for a minimal amount of foreign steel products if either of the following is true:
- (1) The cost for each contract item used does not exceed one tenth of one percent of the total contract cost, or two thousand five hundred dollars, whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project.
 - (2) The director of the purchasing division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

8. FEDERAL BUY AMERICA WAIVERS FOR MANUFACTURED PRODUCTS

- 8.1. There is a Federal General Waiver for Manufactured Products. Due to this waiver, manufactured products permanently incorporated into FHWA-funded projects do not need to be produced domestically, apart from predominantly iron or steel manufactured products and predominantly iron or steel components of manufactured products.

- 8.2. There are currently no additional waivers (including Project-Specific) for Federal Buy America Requirements for Manufactured Products.

9. FEDERAL BUY AMERICA WAIVERS FOR CONSTRUCTION MATERIALS

- 9.1. If the contractor chooses to use foreign material for construction materials and no exception applies, Federal law requires Buy America waivers.
- 9.2. General Waiver:
- 9.2.1. There is no General Waiver for Construction Materials.
- 9.3. Project-Specific Waiver:
- 9.3.1. WVDOH may request a waiver from Federal Buy America requirements for construction materials based on:
- (1) Public Interest: the application of Buy America requirements would be inconsistent with the public interest; or
 - (2) Non-Availability: construction materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.
- 9.3.2. If a contractor wishes to apply for a Project-Specific Waiver, they will contact the WVDOH with justification and relevant supporting information. If found acceptable, this will be sent to FHWA for approval.

**Michael
Mance**

Digitally signed by Michael
Mance
Date: 2025.01.06 13:38:47
-05'00'

Michael A. Mance, P.E.
Director
Materials Control, Soils & Testing Division