



## **Purpose**

The purpose of this Construction Bulletin is to provide guidance and issue updated policy necessary to comply with changes made to the Code of Federal Regulations (CFR) and the discontinuation of the Manufactured Product Waiver. Those changes pertain to the utilization of American made materials in construction contracts that affect contracts advertised after October 1, 2025.

## **Background**

On January 14, 2025, Federal Highway Administration issued a Final Rule that amends the FHWA Buy America regulations. These changes to the CFR terminate FHWA's general waiver for manufactured products and establish requirements for manufactured products with respect to federally funded projects. The final rule is effective March 20, 2025, however, the discontinuation of the manufactured product waiver will be implemented in three stages.

- For projects advertised on or after March 20, 2025; the changes to 23 CFR Part 635 go into effect, but the general waiver for manufactured products remains.
- For projects advertised on or after October 1, 2025; the general waiver for manufactured products will be discontinued and manufactured products will have to be manufactured in the United States.
- For projects advertised on or after October 1, 2026; the definition of manufactured product will change again.

***“Buy America Requirements”*** is the heading in Section 1-06 of the Contract Provision. These Provisions apply to all the Buy America requirements in effect after March 20, 2025, and include the requirements from the Build America, Buy America Act (BABA), 2 CFR 184 Buy America Preferences for Infrastructure, and 23 CFR 635.410 Buy America Requirements.

## **Guidance**

For Contracts Advertisement on or after March 20, 2025 ( the October 1 changes do not affect these categories); an article, material, or supply must be classified into one of the following four categories:

1. Excluded Material – Item is not subject to the Buy America requirements. Buy America requirements do not apply.
2. Iron or Steel Product – Item is wholly or predominantly made of iron, steel, or a combination of both. Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components.



The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate.

3. Construction Material – Item consists of only one of the listed materials. (Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material, this includes but is not limited to items such as a protective coating, adhesive to glue together materials, or a gasket or seal to connect materials together).
4. Manufactured Product – Item is 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. Also, the item is not classified as not an excluded material, iron or steel product, or a construction material, although these can be components of the manufactured item.

Classification is based on the status of the material at the time it is brought to the work site.

Items are only classified under only one of the four categories except in the following situations:

- If a precast concrete product is classified as a manufactured product, the components that consist wholly or predominantly of iron or steel or a combination of both [iron and steel] shall be considered a component of the manufactured product and must also meet the requirements for an Iron or Steel Product.
- If an ITS or other electronic hardware system is classified as a manufactured product, cabinets or other enclosures that consist wholly or predominantly of iron or steel or a combination of both must also meet the Iron or Steel Product Requirements

In both of these situations, the item is classified as a Manufacturer Product and the Iron or Steel Product also needs tracked as an Iron or Steel Product.

For Iron or Steel Products, the Certification requirements remain the same. The Contractor is required to submit a Certification of Materials Origin (CMO) – DOT Form 350-109 - for the Iron or Steel products permanently incorporated into the project. Foreign iron or steel products permanently placed on the project will count towards the projects foreign steel and iron allowance. Foreign iron or steel in manufactured products only counts towards the projects foreign steel and iron allowance if it is in a



precast concrete product or it is the cabinet or other enclosure of an ITS or other electronic hardware system.

Beginning on October 1, 2025 both Manufactured Products and Construction Materials will be tracked together. The Contractor is required to submit a Certification of Material Origin – DOT Form 350-108 for all Manufactured Products and Construction Materials permanently incorporated into the project. Minor amounts of Foreign manufactured products and construction materials may be utilized on the project provided they don't exceed the amount allowed by the waiver for De Minimis Costs.

Tracking sheets are available on the Construction SharePoint site for WSDOT use to track the cost of foreign iron or steel products and foreign manufactured products and construction materials permanently incorporated into the project using the amounts submitted on CMOs.

## **Resources**

### **General Special Provisions**

1-06.GR1 - Control of Material (Standard Specification Heading)

1-06.OPT2.GR1 - Buy America Requirements (Heading)

1-06.OPT2(A).GR1 – Buy America Requirements (Requirements for projects with more than \$500K in Federal funding)

1-06.OPT2(B).GR1 – Temporary Iron and Steel (List of exclude temporary steel and iron materials)

1-06.OPT2(C).GR1 – Buy America Waiver (Waiver for projects with \$500k or less in Federal funding)

### **Design Build Templates:**

Internally available at Design-Build Program – Home (SharePoint)

Externally available by contacting [Designbuild@wsdot.wa.gov](mailto:Designbuild@wsdot.wa.gov).

### **Forms:**

DOT Form 350-109 - Certificate of Materials Origin (Use only for steel or iron)

DOT Form 350-108 - Certificate of Materials Origin (Use only for manufactured products and construction materials)

### **Manuals:**



State Construction Office  
Engineering & Regional Operations

## Buy America Requirements

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Date: October 1, 2025

The Construction Manual is being updated with this information, and once completed, this bulletin will be retired.

### **Implementation Plan**

Updated GSPs will be available October 1, 2025. Any projects advertised on or after October 1, 2025 will no longer have the Manufactured Product Waiver, and the Buy America Requirements will apply to Manufactured Products.

### **Additional Information**

Classification of Materials (attached)

Classification of Materials – Examples (attached)

Manufactured Product Evaluation (attached)

Buy America Requirements Frequently Asked Questions (Attached)

### **Contact Information**

<b><u>General Information</u></b> Chris Tams <a href="mailto:chris.tams@wsdot.wa.gov">chris.tams@wsdot.wa.gov</a> 360-705-7833	<b><u>Special Provisions</u></b> Patricia Crane <a href="mailto:patricia.crane@wsdot.wa.gov">patricia.crane@wsdot.wa.gov</a> 360-705-7834
<b><u>Design Build</u></b> Art McCluskey <a href="mailto:art.mccluskey@wsdot.wa.gov">art.mccluskey@wsdot.wa.gov</a> 360-705-7469	<b><u>Certificate of Material Origin</u></b> Heidi Jensen <a href="mailto:heidi.jensen@wsdot.wa.gov">heidi.jensen@wsdot.wa.gov</a> 360-705-7908

# Buy America - Classification

*Classification is based on how it arrives on site.*

## Excluded Material

- Section 70917(c) excluded materials
  - Cement
  - Cementitious materials
  - Aggregates (i.e. stone, sand, gravel)
  - Binding agents
  - Additives
  - A mixture of the above materials that are delivered to the work site without final form (i.e. HMA and wet concrete)
- Temporary materials that are not being permanently incorporated into the project.
- Raw/minimally processed materials that do not fall into the other categories. (i.e., seed, topsoil, fill dirt)

## Iron or Steel Product

- Articles, materials, or supplies that the iron and steel content exceeds 50% of the total cost of all its components (includes castings, or forgings utilized in the manufacture).

### Dual Category Exception:

If a precast concrete product or an ITS or other electronic hardware system is a manufactured product, the following are still considered an Iron or Steel Product as well:

- Any components of a precast concrete product that consist wholly or \*predominantly of iron or steel or a combination of both.
- The cabinets or other enclosures of ITS or other electronic hardware systems that consist wholly or \*predominantly of iron or steel or a combination of both

## Construction Material

- Non-ferrous metals
- Plastic and polymer-based products (includes polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
- Glass (includes optic glass)
- Fiber optic cable (includes drop cable)
- Optical fiber
- Lumber
- Drywall
- Engineered wood

## Manufactured Product

- 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.

AND

- Not an Iron or Steel Product or a Construction Material

### Dual Category Exception:

- Any components of a precast concrete product and the cabinets or other enclosures of an ITS or other electronic hardware system that consist wholly or \*predominantly of iron or steel or a combination of both shall also be included in determining whether the Manufactured Product was produced in the United States.

*\*Predominantly of iron or steel or a combination of both means the cost of the iron and steel content exceeds 50% of the total cost of all its components*

# Classification Examples

*Classification is based on how it arrives on site – List is just examples of categories and not all items.*

## Excluded Material

- Section 70917(c) excluded materials (or mixtures of these materials when not processed into a specific shape yet)
  - HMA
  - Ready-mix concrete
  - CSBC
  - CSTC
  - Shoulder Ballast
- Temporary materials
  - Temporary barrier
  - Temporary pavement markings
  - Class A signing
- Raw/minimally processed materials that do not fall into the other categories.
  - Topsoil
  - Common borrow
  - Hyrdoseeding

## Iron or Steel Product

- Iron or steel drain pipe
- Zinc or aluminum coated corrugated iron or steel drain pipe
- Stainless steel sheeting
- Stainless steel hardware (nuts, bolts, studs, washers)
- Steel sign posts
- Steel guardrail posts
- Guardrail
- Reinforcing steel
- Steel piling

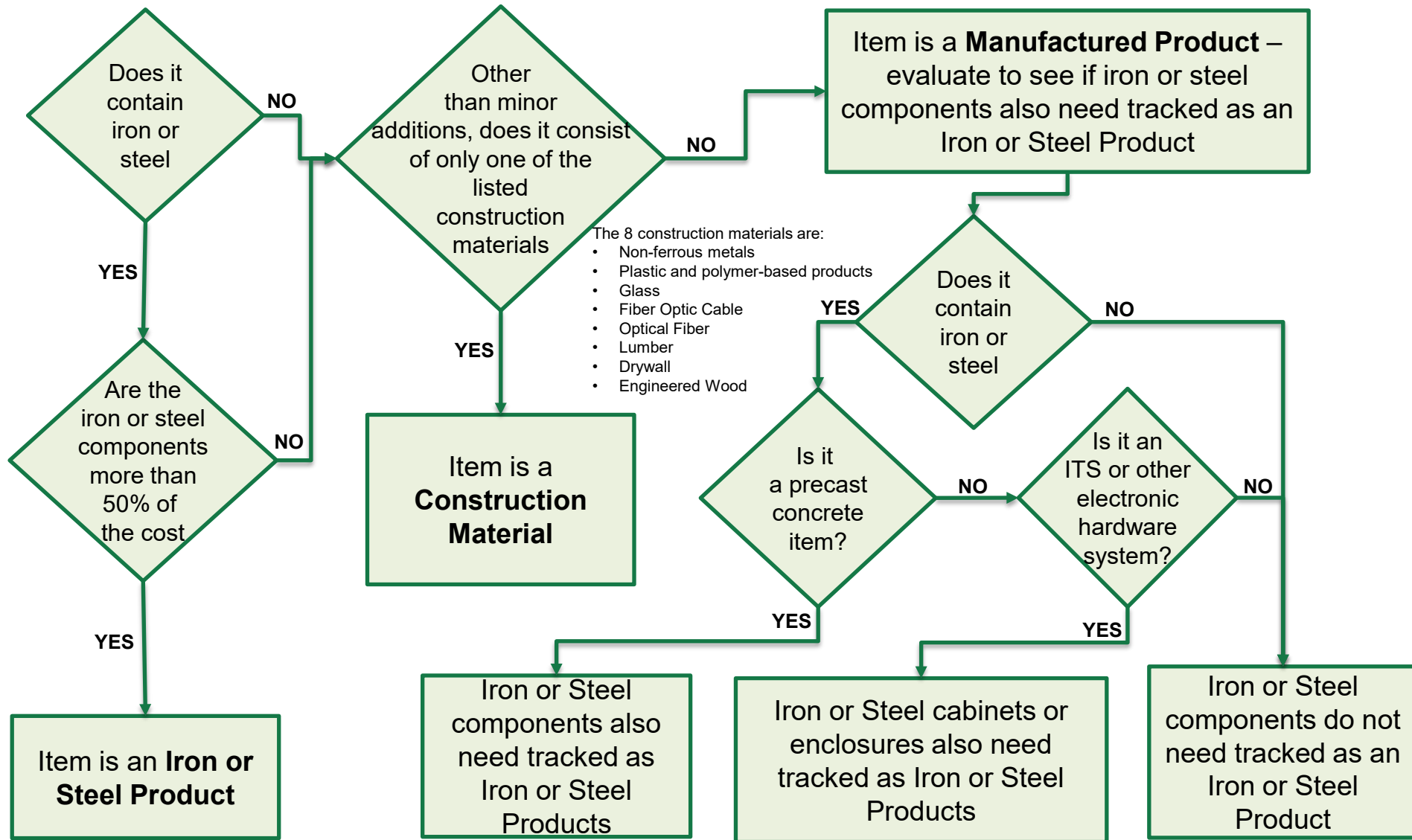
## Construction Material

- Non-ferrous metals
  - Aluminum poles
- Plastic and polymer-based products
  - Rubber
  - PVC Pipe
  - Expanded Polystyrene
- Glass
  - Luminaire Lenses
  - Glass Beads
  - Recycled Glass
- Fiber optic cable (includes drop cable)
- Optical fiber
- Lumber
  - Timber Piling
  - Wood posts
  - Treated lumber
- Drywall
- Engineered wood

## Manufactured Product

- Manufactured items need further evaluation to determine if they are a manufactured product or another item.
- Some items are always a manufactured product such as:
  - Paint
  - Bricks
  - Concrete drain pipe (not reinforced)
  - Signs (permanent)
- Some items may change based on the material composition and need evaluated further such as:
  - Reinforced concrete drain pipe
  - Precast conc barrier
  - Traffic signals
  - Luminaire bases
  - SealantsSee Manufactured Product Evaluation flowchart if unsure.

# Manufactured Products - Evaluation



***Classification is based on the status at the time it is brought to the work site  
This evaluation is not for items that are considered an Excluded Material***

## **Buy America Requirements Frequently Asked Questions: Resource Guide for WSDOT Staff**

Below is the tracking of questions that have already been asked regarding administering Contracts with Buy America requirements.

If there is a question not answered within, please email Heidi Jensen at [heidi.jensen@wsdot.wa.gov](mailto:heidi.jensen@wsdot.wa.gov).



# Buy America Requirements Frequently Asked Questions: Resource Guide for WSDOT Staff

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## **Buy America Requirements Frequently Asked Questions: Resource Guide for WSDOT Staff**

*The answers given below only apply to Contracts advertised after March 20, 2025 with the “Buy America Requirement” in Section 1-06 of the Contract Provisions.*

### **Buy America Requirements - Policy**

#### **1. Are temporary items exempt from Buy America requirements?**

Yes, temporary items that are removed prior to project completion are exempt from Buy America Requirements.

#### **2. We received a question that other states have different Buy America requirements than WA and want to know why requirements in each state can vary?**

Most of the decision-making process of how to implement Buy America requirements is determined within each state, working with their FHWA Division Office for approval, which can result in differences across the states.

The FHWA contact for Buy America requirements can be found on the FHWA BA webpage.

#### **3. Do we need to include a change order to document the rule changes or the end to the nationwide waiver for manufactured products?**

No, the appropriate requirements are included based on when the project is advertised. Any waivers or rule changes will be included in the Contract Provisions.

#### **4. It is impossible to manufacture aluminum completely in the United States as we no longer mine Boxite nor do we smelt aluminum. How can we install aluminum on a project and remain Buy America compliant?**

Aluminum would be considered made in the United States if steps 2 through 4 occur in the United States:

1. Raw material mined
2. Smelted to make some bulk for Aluminum
3. Bulk Aluminum Combined with alloys and stamped to make sheets or rounds of Aluminum or just stamped to make bulk structural shapes
4. Rounds/Sheets are corrugated and pressed to make products (culverts, etc.)

## **Buy America Requirements Frequently Asked Questions: Resource Guide for WSDOT Staff**

### **5. Are signing materials and fabrication considered a Construction Material or a Manufactured Product?**

Aluminum signs fall into the “Manufactured Products” classification. The sheeting is integral to the products, making it a combination of two different categories.

Any steel mounting hardware or posts required for installation would still require the appropriate steel or iron CMO (DOT Form 350-109). Determination is based on how it is brought to the site, not the final product after it is assembled.

### **6. If domestic steel or iron is purchased and shipped to Canada for incorporation into a pre-cast wall panel would the steel or iron be Buy America compliant if we collected CMOs showing the steel or iron was manufactured in the United States?**

It depends. The following determination could change in the future as law/reg/policy changes—e.g. the recent Federal Register Notice indicates the FHWA plans to discontinue the FHWA general manufacturing waiver. However, the FHWA general manufacturing waiver is currently still in effect and requires that the iron/steel incorporated in the manufactured product meets FHWA’s requirements for Buy America (iron/steel.) With that in mind, it seems FHWA’s Buy America Q and A for Federal-aid Program #46 is relevant here:

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

No. Buy America does not apply to iron/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/steel product while overseas, the resulting product becomes foreign and does not conform with Buy America requirements.”

Please note that no manufacturing process may occur (internationally) on the steel incorporated in the manufactured item, which includes: bending, cutting, extruding, drilling, coating, etc. A few specific things come to mind right now (though these are not all-inclusive):

- Bending of steel rebar: Sometimes rebar is bent to fit the shapes needed. That could not occur on any steel that was shipped internationally (as it would not meet Buy America.)
- Steel splicing: All of the methods I am aware of for steel splicing (lap, welded, mechanical coupler) involve altering the steel, thus making the steel foreign.

## **Buy America Requirements Frequently Asked Questions: Resource Guide for WSDOT Staff**

Note: The ties for the reinforcement are often made out of steel. The process of tying does not alter the steel being tied and would not be considered a manufacturing process, however if the ties were not manufactured domestically, the cost would need to be tracked as foreign steel or iron for the project.

Again, the bullets above are not all-inclusive, so you may need to inquire and get some information regarding the process for the specific manufacturer.

### **7. If a change order is created to set up a state funded group on a federally funded contract, can the Buy America requirements be omitted for the material used for that change order?**

No, Buy America requirements apply to project if it has federal funding anywhere in the project, regardless of if there are portions of it that are state funded.

### **8. What happens if the wrong version of the General Special Provision (GSPs) for Buy America was included in the Contract?**

A change order would be needed to add the correct GSPs in the Contract. Contact your ASCE to determine if a change order is appropriate.

### **9. Do Buy America Requirements apply to temporary items that were left in place, such as shoring?**

If a temporary item is left in place for convenience, but it is not part of the final product, the Buy America requirements do not apply. Temporary means that it must be removed at the end of the project, or the provisions may allow it to be left/abandoned at the contractor's convenience.

## **Buy America Requirements Frequently Asked Questions: Resource Guide for WSDOT Staff**

### **Material Classification**

#### **10. What if a material is a Manufactured Product (less than 50% Iron or Steel Products), but the material approved for installation includes steel or iron?**

If the material is classified as a Manufactured Product, the steel or iron only needs tracked separately in these two exceptions:

- steel or iron components in a precast concrete Manufactured Product;
- steel or iron in the cabinet or other enclosure in an ITS or electronic hardware system Manufactured Product.

For these steel or iron components, the RAM will need to be coded to require a steel or iron CMO and we will need to ensure the CMO is on file prior to permanently incorporating the steel or iron into the project.

These items also still need tracked as a manufactured product.

#### **11. What if we believe a material is a Iron or Steel Product and the Contractor believes it is a Manufactured Product?**

If the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product. In the case of a disagreement, request a copy of the Contractor's good faith estimate. Questions regarding classification of a material can be emailed to the State Construction Office at [DOTconstruction@WSDOT.WA.GOV](mailto:DOTconstruction@WSDOT.WA.GOV).

#### **12. Is Stainless Steel a Manufactured Product or an Iron or Steel Product?**

Stainless steel is an Iron or Steel Product. The cost of an iron or steel includes the cost of castings or forgings, therefore Stainless steel remains an Iron or Steel Product regardless of the addition of a more expensive metal added to the steel.

#### **13. Is solid PVC pipe with gaskets classified as a Construction Material?**

Yes, FHWA has verified that solid PVC pipe with gaskets is a Construction Material and if sourced outside of the US would need to be tracked as a foreign Construction Material.

## **Buy America Requirements Frequently Asked Questions: Resource Guide for WSDOT Staff**

### **Buy America Certification of Materials Origin - CMO**

#### **14. What do we do if a Manufactured Products and Construction Materials CMO is received showing that foreign Manufactured Products and/or foreign Construction Materials were installed?**

1. Include both the foreign Construction Material cost and the foreign Manufactured Product cost shown on the CMO on the foreign Manufactured Products and Construction Materials tracking sheet.
2. If at any time the combined foreign Manufactured Products and foreign Construction Material cost exceeds \$1,000,000 contact the State Construction Office.

#### **15. Is the Manufactured Products and Construction Materials CMO required even if the estimate payment does not include payment for any materials (ie. only flagging or installing temporary signs)?**

Yes, the contract language does not allow for non-submittal of the Manufactured Products and Construction Materials CMO if material was not installed during the estimate period. It simply states that a CMO must be on file before the Contractor will receive payment. The Manufactured Products and Construction Materials CMO includes a check box that can be used if no material was placed during the estimate period.

#### **16. Does the Manufactured Products and Construction Materials CMO need to list all the bid items or material the Contractor is certifying?**

No, the Manufactured Products and Construction Materials CMO is a blanket certification that is certifying all the construction materials associated with the specific estimate number noted on the form.

#### **17. When should we receive the Manufactured Products and Construction Materials CMO?**

The Contractor is certifying that all the Manufactured Products and Construction Materials installed for a specific estimate were made in the United States, therefore the CMO should be received close to estimate cutoff.

#### **18. Do we need to collect a Manufactured Products and Construction Materials CMO for items classified as a manufactured product?**

Yes, the nationwide waiver for material classified as a Manufactured Product ended on October 1, 2025.



## **Buy America Requirements Frequently Asked Questions: Resource Guide for WSDOT Staff**

### **19. Is it just enough to review the pre-estimate to ensure that all the CMOs were received prior to material installation instead of collecting this additional Manufactured Products and Construction Materials CMO before we make the payment?**

The CMOs received prior to installation of steel or iron cannot be used as the CMO to certify the Construction Materials installed on the project. The CMO for steel or iron cannot be used for Construction Materials or vice versa:

- DOT Form 350-109 – Certification of Materials Origin for acceptance of Steel or Iron ONLY
- DOT Form 350-108 – Certification of Materials Origin for acceptance of Manufactured Products and Construction Materials ONLY)

### **20. Can the PE approve the progress estimate without a Manufactured Products and Construction Materials CMO on file?**

No, the Manufactured Products and Construction Materials CMO must be on file before the progress estimate can be approved for payment.

### **21. The signature line on the Manufactured Products and Construction Materials CMO specifies only the Contractor's signature. Does this mean that the Prime is solely responsible for submitting this form?**

Yes, it is the Prime's responsibility to ensure that all the materials installed by themselves and all subcontractors for the estimate specified on the form were Buy America compliant.

### **22. Do we require separate Manufactured Products and Construction Materials CMOs for Materials On Hand (MOH) payments?**

MOH material will be covered under the Manufactured Products and Construction Materials CMO received for the progress estimate when the material is installed. A separate CMO is not required for MOH payments.

### **23. Since the QPL items are already vetted, is a Manufactured Products and Construction Materials CMO still required for these materials?**

The Manufactured Products and Construction Materials CMO certifies all materials installed for the progress estimate specified on the form. Products listed on the QPL are not reviewed for Buy America compliance.

## **Buy America Requirements Frequently Asked Questions: Resource Guide for WSDOT Staff**

### **24. Does the Manufactured Products and Construction Materials CMO certify the material from the previous estimate or is it for the current estimate pay period?**

The Manufactured Products and Construction Materials CMO only certifies material for the pay estimate specified on the form and is required for each pay estimate before payment can be made.

### **25. Does WSDOT need to provide the Contractor with a total for each material installed during the estimate pay period?**

WSDOT does not need to provide the Contractor with a list of material that was installed during the estimate pay period. The Manufactured Products and Construction Materials CMO is a contractor provided certification that certifies all construction material installed for the specified pay estimate period is Buy America compliant.

### **26. Why are there four different CMO forms?**

The steel or iron CMO (DOT Form 350-109) remains unchanged and is required to be submitted prior to permanent incorporation of steel or iron.

Changes in the law after initial Buy America/Build America Act implementation has made three different versions of the Construction Materials CMO necessary for compliance:

Construction Materials CMO (DOT Form 350-110) is required on projects advertised on or after October 17, 2022, with an award date before August 16, 2023.

Construction Materials CMO (DOT Form 350-111) is required on projects that were awarded on or after August 16, 2023 and advertised before October 1, 2025.

Manufactured Products and Construction Materials CMO (DOT Form 350-111) is required on projects that were advertised on or after October 1, 2025.

## **Buy America Requirements Frequently Asked Questions: Resource Guide for WSDOT Staff**

### **Emergency Contracting**

#### **27. Is the Manufactured Products and Construction Materials CMO required for emergency projects or is there an exemption due to time constraints for these types of projects?**

There is no allowance in the law for emergency projects, Manufactured Products and Construction Materials CMOs will be required if the project has federal funding or if expecting federal reimbursement later.

Be sure to discuss the Buy America requirements with the Contractor before the project begins.

#### **28. What if we receive a Manufactured Products and Construction Materials CMO showing foreign construction material was used on an emergency project?**

The project office will need to follow the guidance in Questions 14 above.

## **Buy America Requirements Frequently Asked Questions: Resource Guide for WSDOT Staff**

### **Other**

#### **29. What type of document should the Manufactured Products and Construction Materials CMO be submitted as in Unifier?**

The Manufactured Products and Construction Materials CMO will be submitted as a construction submittal in Unifier.

If the Manufactured Products and Construction Materials CMO shows that foreign construction material was installed, the PE must be notified immediately, and they will need to follow the guidance in question 14 above.

#### **30. Will the QPL be updated to include Buy America requirements?**

The QPL will not be updated to include Buy America requirements at this time.

The QPL is a database of pre-approved construction materials that have been shown to meet WSDOT Material Quality standards and requirements. Certificate of Materials Origin requirements are contract administrative and not Material Quality standards and requirements. The contractor is required to submit a Certificate of Materials Origin for all Manufactured Products and Construction Materials.