



# Buy America: Frequently Asked Questions

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Utility Portfolio Section, Right of Way Division

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## Buy America Frequently Asked Questions

1. What is the definition of “domestically manufactured products that are composed predominately of steel and/or iron”?

“Domestically manufactured products” are those products manufactured in the United States that have not undergone any manufacturing process outside of the United States that modified the chemical content, physical shape or size, or final finish of the product, beginning with the initial melting and continuing through final shaping and coating. Examples of such products may include poles, cross arms, and structural support members; towers and girders used to comprise transmission towers and stand-alone structures; conductor support cables; high-strength bolts used as anchor bolts and anchor rods; iron or steel baseplates; encasement pipes, pipes and valves; rebar and other reinforcing iron/steel for all cast-in-place and precast installations; conduit and ducting; fire hydrants; manhole covers, rims, and drop-inlet grates.

TxDOT has received no guidance as to the definition of “predominately” and is reluctant to adopt its own definition absent such guidance. The use of the word “predominately” arises in a FHWA memorandum that was issued in 1997. That memo provided no further clue as to what was meant by the word. We expect that “predominately” falls somewhere between 50% and 100%. While TxDOT cannot now provide clarity as to the definition of “predominately”, it encourages the industry to be conservative and reference past practices, prior to the federal District Court decision, in its determination of the steel and iron products that require Buy America compliance.

2. Can the raw material be sourced internationally if the product is formed in the United States or must the raw material be domestic as well?

The Buy America requirements are specific to the location of the manufacturing process, not the source of the raw materials.

3. Is a steel valve that is mostly manufactured in the US acceptable?

If the product is predominately composed of iron and/or steel, it must be manufactured domestically.

4. How much lead time is acceptable to TXDOT in order to comply with Buy America?

There is no specific timeframe defined. Each utility adjustment must be handled on a case-by-case basis. However, TxDOT conducts routine utility meetings to discuss current and future projects so that our industry partners are aware and able to plan for transportation projects that may cause impacts to their facilities, including ordering materials that may have long lead times. Project Tracker and the Unified Transportation program document are tools available to view projects for planning purposes. TxDOT expects that our industry partners will make use of the tools that are available.

<https://www.txdot.gov/inside-txdot/projects/project-tracker.html>

5. What if a member of the industry does not meet Buy America specifications for part of its project?

The utility owner is required to be compliant on all portions of applicable projects. Failure to submit the required documentation or to comply with the Buy America requirements shall result in:

- (1) the Utility becoming ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991;
- (2) the State withholding reimbursement for the costs incurred by the Utility in the adjustment, removal, and relocation of the Utility's facilities; and
- (3) removal and replacement of the non-compliant products.

6. If the fittings, valves and stopples are not manufactured in the United States, what is the required documentation?

Buy America does not apply to assembly materials, attachment materials, housing encasements, or miscellaneous electronics.

Fittings are classified as an attachment material; therefore, it does not require Buy America compliance.

In the case of valves and stopples, these products are required to be Buy America compliant, if they are predominately composed of steel and/or iron.

However, non-domestic iron and steel materials may be used provided the cost of such materials does not exceed one-tenth of one percent (0.1 %) of the individual Utility Agreement amount, or \$2,500.00 – whichever is greater. The De Minimis calculation is made by the following formula: Combined Cost of Only those Materials that are Subject to Buy America and are Non-Compliant (limited to the individual Utility Agreement) divided by the Total Utility Relocation Cost (cited in the individual Utility Agreement).

7. When is a fitting considered installed?

When the utility structure is being installed in the field – just before the line goes into service.

8. Do you expect Utilities to submit the TxDOT Form 1818 before the job is constructed?

Yes. The high-level sequence of events is (1) procurement of the materials, (2) receipt of the materials along with appropriate documentation (e.g. MTRs), and (3) installation of the materials. So, based on this order, members of the industry should have the documentation to submit to TxDOT for compliance verification prior to the materials being installed on the project.

9. What is the industry to do if minor pieces of material do not have proper documentation?  
TxDOT Form 1818 should be furnished with attached evidence of compliance. Utility owners may demonstrate Buy America compliance by one of the three (3) following methods (or a combination):
- i. Written certification from the factory(ies): The Mill Test Report (MTR) issued and signed by the initial fabricator stating that the materials subject to Buy America were melted and manufactured in the United States.
  - ii. Written certification signed by the vendor on company letterhead, or other acceptable documentation, signed by an authorized representative of the vendor declaring that all supplied materials subject to the Buy America provisions are fully compliant.
  - iii. Other written statements on company letterhead, or other acceptable documentation, signed by an authorized representative, from the manufacturers providing any additional treatment to the fabricated material (such as blasting, galvanizing or painting) occurred in the United States.
  - iv. Written certification should state that all products that are composed predominately of steel and/or iron were manufactured domestically, in compliance with the BUY AMERICA. Certification should include project information pertaining to the standard utility agreement.
10. Should MTRs be attached to the TxDOT Form 1818?  
Yes
11. If the TxDOT Form 1818 is submitted prior to installing materials, what happens if additional materials are required due to a scope change? Will TXDOT reimburse for material not included in the original Form 1818 submittal?  
Submit the additional TxDOT Forms 1818 with supporting documentation prior to installation of the additional materials.
12. Material is typically received in batches (especially on larger projects), due to material availability. If members of the industry want to continue receiving their materials in batches on an as-needed basis, is a TxDOT Form 1818 required for every batch of material that comes in?  
TxDOT Forms 1818 are required to account for all applicable materials used on projects that are subject to Buy America requirements.
13. Certain fittings are used only in the abandonment of the old asset (capping an old line) or a temporary bypass and do not remain in service. Are these subject to Buy America requirements?  
Buy America does not apply to assembly materials, attachment materials, housing encasements, or miscellaneous electronics. Fittings are classified as an attachment material; therefore, it does not require Buy America compliance. In addition, these fittings may not be considered to be permanently incorporated into the project. Buy America does not apply to products that are not permanently incorporated into the project.

14. Is the list of materials required to meet the Buy America provisions limited to the examples given in the TxDOT Guidelines or is that list an “including but not limited to” example?

The materials listed in the TxDOT Buy America Guidelines are “including but not limited to”.

15. Manufacture vs. Assembly

"Manufacturing process" means the application of a process to alter the form or function of materials or elements of a product in a manner that adds value and transforms the materials or elements into a new finished product that is functionally different from a finished product produced merely from assembling the materials or elements into a product.

“Assembly” means putting together all the component parts and subassemblies of a given product.

16. Senate Bill 1289 (2017) – PLEASE NOTE

Texas Transportation Code Sec. 223.045. IRON AND STEEL PREFERENCE PROVISIONS IN IMPROVEMENT CONTRACTS. A contract awarded by the department for the improvement of the state highway system without federal aid must contain the same preference provisions for iron and steel and iron and steel products that are required under federal law for an improvement made with federal aid.

17. Do fences (chain link) need to be Buy America compliant?

If the fence is predominately composed of iron and/or steel and is part of the relocation adjustment, it must be manufactured domestically and comply.

18. Are there differences between Buy America requirements of 23 USC 313 and Buy American requirements of 41 USC 10a – 10d?

Yes. Buy America requirements apply to Federal-aid projects, while the Buy American requirements apply to direct Federal procurement contracts.

19. Can you apply Buy American provisions to Federal-aid projects?

No. Buy American provisions do not apply to Federal-aid projects. It applies to direct Federal procurement contracts using Federal Acquisition Regulations. However, if a Federal agency is acting as the direct contracting entity for a project involving Federal-aid funding, such as an arrangement between a State DOT and a FHWA Federal Lands Division Office, the project will be procured pursuant to the FAR and Buy American will apply.

20. Does Buy America apply to aluminum products (like aluminum light poles)?

No. Buy America applies only to iron and steel products.

21. Do the new Buy America guidelines apply retroactively to relocation agreements signed in 2017, 2018, 2019?

Yes. you may submit a revised cost estimate or execute a supplemental agreement to identify the new items that must comply with the latest Buy America guidelines.

22. Are steel culverts exempt, if they are only installed for temporary access and removed?

Yes, According to TxDOT Buy America Guidelines, "Buy America does not apply to associated materials necessary for a temporary utility relocation".

23. Does Buy America apply to miscellaneous items?

No. Buy America does not apply to assembly materials, attachment materials, housing encasements, or miscellaneous electronics as defined in the guidelines.

24. What is considered domestically manufactured?

All manufacturing processes of the steel material in a project (i.e., smelting, and any subsequent process which alters the steel material's physical form or shape or changes its chemical composition) must occur within the United States to be considered of domestic origin. This includes processes such as rolling, extruding, machining, bending, grinding, and drilling.