

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

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MATERIALS PROCEDURE

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WVDOH BUY AMERICA EXCEPTION  
AND WAIVER GUIDELINES

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**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.
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**2. REFERENCED DOCUMENTS**

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

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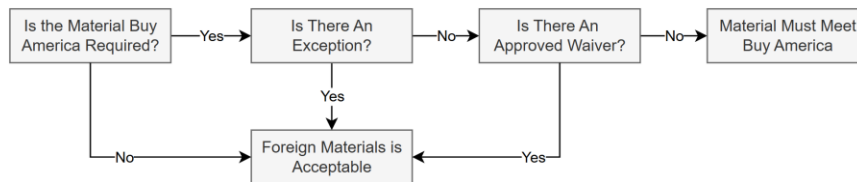
<sup>1</sup> [http://www.legis.state.wv.us/Bill\\_Status/bills\\_text.cfm?billdoc=hb2207%20intr.htm&yr=2001&sesstype=RS&i=2207](http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?billdoc=hb2207%20intr.htm&yr=2001&sesstype=RS&i=2207)

<sup>2</sup> <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



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## 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. During the time which the De Minimis Special Provision is active for a project, there exists an exception for the minimal use of Manufactured Products and Construction Materials. The De Minimis Costs portion of the Special Provision waives the application of the requirements of the Build America, Buy America Act (BABA) for when the total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project. This portion of the waiver does not waive FHWA’s Buy America requirements for Steel and Iron Materials, and FHWA continues to apply its Buy America requirements to projects that would otherwise be covered by the De Minimis portion of the waiver. It is important to note, however, that FHWA’s De Minimis standard for Steel and Iron Materials under 23 CFR 635.410(b)(4) continues to apply. The application procedure for this exception is outlined in Section 10.

- 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.

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**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.

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**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.

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**8. FEDERAL BUY AMERICA WAIVERS FOR MANUFACTURED PRODUCTS**

- 8.1. There is no General Waiver or Project-Specific Waiver for Manufactured Products.

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**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.

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**10. APPLICATION FOR DE MINIMIS FOR FOREIGN MANUFACTURED PRODUCTS AND/OR CONSTRUCTION MATERIALS**

- 10.1. If the contractor chooses to use foreign manufactured products and/or construction materials by applying the De Minimis Costs exception, the following procedures must be completed to be submitted for Division consideration for approval of De Minimis:
  - 10.1.1. The contractor shall fill out form BAM-DM-25 and submit it to the Project. The form is located in the WVDOH [Toolbox](https://transportation.wv.gov/highways/mcst/Pages/tbox.aspx)<sup>3</sup> and a sample form is attached for reference in Attachment 1.

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<sup>3</sup> <https://transportation.wv.gov/highways/mcst/Pages/tbox.aspx>

- 10.1.1.1. The documentation shall ensure the conditions described in Section 4 are met and shall contain the following information:
1. Total Cost of Buy America Required Materials
  2. Total Cost of Non-Compliant Buy America Materials
  3. Documentation of the delivered cost of materials (Invoices)
  4. A signature from the Contractor certifying the accuracy of the document
  5. The text: “I certify that the cost totals and provided documentation accurately reflect the cost of the materials delivered to the Project as defined by FHWA and MP 106.10.50. In the event of a change order, change in placed quantities, this form shall be updated and resubmitted to ensure continued compliance.”
- 10.2. Upon approval the exception shall be granted. This documentation shall be placed in ProjectWise.

**Michael  
Mance**

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Michael Mance  
Date: 2026.03.26  
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Michael A. Mance, P.E.  
Director  
Materials Control, Soils & Testing Division

MP 106.10.51 Steward – Materials Control Section  
MM:Bb  
ATTACHMENT

**WVDOH Minimal Use & De Minimis Worksheet**

Federal Project #:

Contract ID:

De Minimis Cost Summary

Total Buy America Material on Project	\$	2,734,000.00	
Total Non-Compliant Material	\$	534,000.00	
Allowable Non Compliant Material (\$1,000,000 or 5%)	\$	1,000,000.00	Allowable Non-Compliant Material

Line #	Material Name	Cost of Material Delivered to Project	Buy America Compliant	Invoice Attached (Initial by Contractor)
0050	Epoxy Resin Injection System	\$ 400,000.00	yes	
0060	Blockout, Polymer	\$ 4,500.00	no	
0070	Impervious Membrane	\$ 8,500.00	no	
0100	Paint, Intermediate Coat	\$ 206,000.00	no	
0100	Paint, Top Coat	\$ 315,000.00	no	
0200	Steel Super Structure	\$ 1,800,000.00	yes	

Total Cost of Non-Compliant Material \$ 534,000.00  
 Total Cost of All Material \$ 2,734,000.00

I certify that the cost totals and provided documentation accurately reflect the cost of the materials delivered to the Project as defined by FHWA and MP 106.10.50. In the event of a change order, change in placed quantities, this form shall be updated and resubmitted to ensure continued compliance.

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 Signature of Consultant