



Oregon

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Department of Transportation

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TO: All Utility Facility Owners

FROM: Heather Howe, State Utility and Railroad Liaison, ODOT
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SUBJECT: Buy America Requirements on Utility Relocations

The Federal Highway Administration's (FHWA) Buy America policies require a domestic manufacturing process for all steel or iron products that are permanently incorporated into a Federal-aid highway projects. Section 1518 of Moving Ahead for Progress in the 21st Century Act provides that Buy America applies to all Contracts eligible for federal assistance under Title 23, United States Code, included within the scope of an applicable National Environmental Policy Act (NEPA) finding, determination or decision, regardless of the funding source of such Contracts, where at least one Contract is funded with Title 23 funds. This policy includes relocation projects performed by Utility Companies and are eligible for reimbursement by the Oregon Department of Transportation (ODOT) with or without federal funds. A copy of the FHWA rules and regulations on this policy can be found at:

http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm

As of now, ODOT requires the use of domestic iron and steel in the permanent components of all utility relocation projects that are reimbursed by the Department. "Domestic" means all manufacturing processes occur within the United States. Such processes include, but are not limited to, rolling, extruding, machining, bending, grinding, drilling, and coating or similar processes to manufacture or modify the physical properties or chemical composition of iron or steel. Coatings include any protective or value-enhancing process. The Department will, however, accept:

1. Foreign iron or steel components whose total combined value, including the cost of delivery to the project, does not exceed 0.1 percent of the total contract amount, or \$2,500, whichever is greater.
2. The use of the following nondomestic raw materials: scrap, pig iron, and processed, pelletized, and reduced iron ore.

3. Nondomestic items that are used temporarily then abandoned in place at the contractor's convenience.

At this time all iron and steel products, regardless of what Section 10.345 Buy America states must comply with the Buy America requirements above.

The Utility Owner will need to obtain a Certificate of Material Origin (CMO) as well as a material test report or certification from the manufacturer that states clearly the country of manufacture before any reimbursement can be paid.

A waiver may be granted **by the FHWA (Headquarters)** on a project by project basis if any of the following conditions are met:

1. The application of Buy America provisions would be inconsistent with the public interest.
2. Iron and steel materials/products are not produced in the United States in sufficient and reasonably available quantities which are of satisfactory quality.
3. The statute and regulations also waive Buy America provisions at the time of contract award if the Utility Company elects to include an alternate bidding provision in the project advertisement for foreign and domestic steel and iron products, and the lowest overall bid based on using domestic products is 25 percent more than the lowest overall bid based on using foreign products.

To seek a waiver, you will need to submit a written request to the Utilities Program. The Department will not grant time extensions or pay compensation for delays resulting from processing such a request. Expect the waiver process to take a minimum of nine months and is not guaranteed to be granted.

The key to success is early communication and coordination with each other.