

# Construction



U.S. Department of  
Transportation  
**Federal Highway  
Administration**

**MEMORANDUM**

Subject: Buy America Policy Response  
(Control # HCC-97-070)

Date: December 22, 1997

From: /s/ Original signed by:  
Donald P. Steinke  
Chief, Highway Operations Division

Refer To: HNG-22

To: Mr. Edward V.A. Kussy  
Acting Chief Counsel  
**THROUGH:**  
Mr. Wilbert Baccus  
Deputy Associate Counsel,  
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As pointed out by Mr. Vine on behalf of the Torrington Company, the "Buy America" requirements that pertain to the Federal-aid highway program are found in 23 U.S.C. 101, or Section 165 of the Surface Transportation Assistance Act of 1982 (Public Law 97-424, as amended). Since 1982 there have been both legislative and regulatory amendments but the basic premise has remained the same -- that the steel and iron used for Federal-aid highway and transit work be predominately of U.S. domestic manufacture.

Based on the need to comply with the 1982 legislation, FHWA published an interim final rule (IFR) implementing the requirements of Section 165 in the January 17, 1983 Federal Register (48 FR 1946), effective January 6, 1983. In this IFR, FHWA determined that it was both in the public interest and consistent with the legislative intent to waive the Section 165 requirements for manufactured products other than cement and steel. A review of the Congressional Record pages pertaining to this legislation indicate that Congress' primary concern for Section 165 was to protect the domestic steel industry. The final rule, published on November 25, 1983 (48 FR 53099), retained the waiver for manufactured products other than cement and steel, and discussed the rationale behind the decision. Subsequent legislation modifying the Buy America coverage (cement dropped per Public Law 98-229, Section 10; and iron and coatings added per Public Law 102-240, Section 1041 and Section 1048(a)) has not modified this interpretation. Therefore, although 23 U.S.C. 101 includes manufactured products, the implementing regulations in 23 CFR 635.410 do not.

The FHWA considers a "manufactured product" to be any item that must undergo one or more manufacturing processes before the item can be used in a highway project. A manufactured product may

be usable as a stand-alone product, or as a component within a more complex assembly which would also be considered a manufactured product. Some typical stand-alone products used in highway projects are steel in the form of rebar and structural steel; asphaltic cement; portland cement; and aggregates. Typical composite products include bridge bearings, signal heads, both asphaltic and portland cement concrete; and precast concrete items.

While FHWA does not apply Buy America requirements to "manufactured products," we do apply the requirements to specific components within those products. Case in point, if a bridge bearing was considered only as a manufactured product, it would be exempt from the Buy America requirements. However, FHWA policy has been that the steel components of a predominately steel product must be of domestic manufacture unless the value of the components is less than the minimal use threshold for the project.

Specifically, our guidance to the field offices has been that foreign source components may be combined with domestic steel components into a final product provided that either 1) the final assembly is performed in the United States or 2) the final assembly is completed outside the United States but no manufacturing process is performed on the domestic steel components once they leave the United States. If the foreign source components are non-ferrous, the final product will be acceptable under Buy America. If the foreign source components are ferrous, their use must be based on the minimal use threshold.

If you have any additional questions, please do not hesitate to contact Jennifer Balis, 202-366-4631.

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