



TRAFFIC AND SAFETY MANUAL

Chapter 10 – Utilities 10D Buy America for Utility Relocations

Buy America Index

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Chapter 10 - Utilities

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General

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HISTORY:

Buy America requirements originated in 1983 in the Code of Federal Regulations 23CFR 635.410. Part 1 states: *“The project either: (i) Includes no permanently incorporated steel or iron materials, or (ii) if steel or iron materials are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.”* This applied to all projects where Federal aid is involved.

Beginning January 1, 2014 per section 1518 of MAP-21, if the project as defined by National Environmental Policy Act (NEPA), has at least one authorized Federal-Aid Highway Program (FAHP) construction contract, all utility relocations eligible for federal reimbursement utility work must meet Buy America regardless of funding source.

APPLICABILITY:

- Buy America requirements only affect products containing or composed of steel or iron.
- Buy America only applies to relocations of utility facilities that must move due to highway projects under certain specific conditions as stated below.
- Buy America applies if the utility relocation is eligible for reimbursement with federal funds, however in the case of Buy America few of the eligible relocations will be reimbursed. See below for eligibility criteria and reimbursement guidance.
- Buy America applies in the case where the utility relocation is included in the federal-aid contract. This can be through an agreement with the DOT or Local Agency.

PROJECTS WHERE BUY AMERICA APPLIES TO UTILITY RELOCATIONS IN IOWA:

There are four primary cases when Buy America provisions must be applied to utility relocations in Iowa.

Case 1, Agreement work

This case involves relocation of a utility on private property (fee title or easement) in response to an Iowa Department of Transportation (DOT) project where any Federal funds are used within the NEPA project boundary and where property rights require the DOT to reimburse the utility for relocation. This case applies when the project is on any primary highway or freeway under the jurisdiction of the DOT.

Case 2, Interstate project relocation - DOT permitted work

This case involves relocation of any utility inside DOT right of way due to a DOT project on the interstate system and any federal funds are used within the NEPA project boundary. The reason this case applies in Iowa is because this relocation is eligible for reimbursement due to Iowa Code Section

306A.10 that states the relocation *may* be paid. While the relocation of the utility facility is eligible for reimbursement, historically, the DOT has not paid for such relocations.

Case 3, Interstate project relocation – city or county permitted or franchised work

This case involves relocation of any utility inside city or county right of way due to a DOT project on the interstate system and any federal funds are used within the NEPA project boundary. The reason this case applies in Iowa is because this relocation is eligible for reimbursement due to Iowa Code Section 306A.10 that states the relocation *may* be paid. While the relocation of the utility facility is eligible for reimbursement, historically, the DOT has not paid for such relocations.

Case 4, Utility relocation is included in a federal-aid contract

This involves relocation of any utility that is done as part of a federal-aid DOT project or a federal aid local agency project due to Article 1107.06 of the DOTs Standard Specification. This could be a project on a primary highway or city street. Special provisions may not override or circumvent the requirements of the specifications for Buy America Compliance.

HOW TO COMPLY WITH BUY AMERICA PROVISIONS (Case 1,2,3):

1. The DOT will determine if Buy America applies to utility relocations based on DOT or Local Public Agency (LPA) project requirements.
2. Complete Bill of Materials (form BA2) to determine items that may need to be Buy America compliant.
3. Complete Certificate of Compliance (form BA3) to signify compliance.
4. Submit the signed documents with the permit applications or reimbursement agreements to the DOT (BA2 and BA3).
 - Case 1: Submit signed BA2 and BA3 with the DOT reimbursement agreement.
 - Case 2: Submit signed BA2 and BA3 with the DOT permit application.
 - Case 3: Submit signed BA2 and BA3 to the DOT with a copy of the application or permit granted by the city or county.
5. Complete the relocation work in accordance with the Buy America requirements.
6. Retain verification paperwork (ie. mill and/or step certifications, bills of lading, manufacturers' certificates, etc.) for all Buy America materials for a period of 5 years from the date of issuance of the permit or reimbursement agreement. Field audits of the materials and/or office audits of the certification paperwork by DOT personnel should be expected.

HOW TO COMPLY WITH BUY AMERICA PROVISIONS (Case 4):

1. Comply with article 1107.06 of the DOT Standard Specifications. The process is identified in IADOT I.M. 107. It will be updated for the October 2014 letting. If you have a project that will be let before then, please request the draft information from Bryan Bradley (515-294-1014), bryan.bradley@iowa.gov.

POSSIBLE EXCEPTIONS:

Possible Waiver:

Title 23 Section 313 and FHWA's regulations in 23 CFR 635.410 provide that the Administrator may issue a waiver if, (1) the application of Buy America provisions would be inconsistent with the public

interest or (2) iron and steel materials/products are not produced in the United States in sufficient and reasonably available quantities which are of satisfactory quality. Very few of these waivers have been granted and the expectation is it will continue to be a stringent process with few applications being approved. The waiver process is a very lengthy process so time must be allowed for approvals up to the national level that would typically be on the order of a full year after initiation of the request before final approval. These applications have typically been denied. Consideration should be given to these issues when seeking a waiver.

Minimal Use of Foreign Steel:

Additionally, the FHWA's regulations permit a minimal use of foreign steel and iron in the amount of \$2,500 or one-tenth of one percent of the utility relocation contract/cost, whichever is greater. This amount would be the total amount of foreign steel or iron allowed on the utility project across all of the materials supplied. **Incorporation of any foreign steel must be preapproved by the DOT.**

Link to the exception descriptions;

<http://www.gpo.gov/fdsys/pkg/CFR-2013-title23-vol1/xml/CFR-2013-title23-vol1-sec635-410.xml>

WORDING IN PERMITS TO PROMPT COMPLIANCE (Special Requirements):

All work done under this utility accommodation permit must conform to Buy America requirements in accordance with 23CFR 635.410 as it relates to permanently incorporated steel and/or iron materials. Three supporting documents are attached to this permit. BA1 is a guide of why Buy America applies and how to apply Buy America requirements. BA2 and BA3 need to be signed and submitted to the DOT with the permit application. Failure to comply with Buy America requirements may result in revoking large government contracts and possible fraud charges.

IOWA CODE 306A.10

Iowa Code 306A.10 *Notice to relocate – costs paid.*

*Whenever the state department of transportation, city or county determines that relocation or removal of any utility facility now located in, over, along, or under any highway or street, is necessitated by the construction of a project on routes of the **national system of interstates** and defense highways including extensions within cities of on streets or highways resulting from interstate substitutions in a qualified metropolitan area under Tit. 23, U.S.C. the utility owning or operating the facility shall relocate or remove the same in accordance with statutory notice. The costs of relocation or removal, including the costs of installation in a new location, shall be ascertained by the authority having jurisdiction over the project or as determined in condemnation proceedings for such purposes and **may be paid** from participating federal aid or other funds.*



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Materials

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MATERIALS THAT NEED TO MEET BUY AMERICA REQUIREMENTS:

For a specific part or item to be required to comply with the Buy America regulations the product must be manufactured predominantly of steel or iron. The FHWA deems a product to be manufactured predominately of steel or iron if the product consists of at least 90% (by weight) steel or iron content when it is delivered to the job site for installation.

Examples of products that are subject to Buy America:

Coverage includes but is not limited to, the following:

- Steel or iron products used in pavements, bridges, tunnels or other structures, which include, but are not limited to, the following: fabricated structural steel, reinforcing steel, piling, high strength bolts, anchor bolts, dowel bars, permanently incorporated sheet piling, bridge bearings, cable wire/strand, prestressing/post tensioning wire, motor machinery brakes and other equipment for moveable structures;
- guardrail, guardrail posts, end sections, terminals, cable guardrail;
- steel fencing material, fence posts;
- steel or iron pipe, conduit, grates, manhole covers, risers;
- mast arms, poles, standards, trusses, or supporting structural members for signs, luminaires, or traffic control systems;
- steel or iron components of precast concrete products, such as reinforcing steel, wire mesh, and pre-stressing or post-tensioning strands or cables and
- cabinets (the outer shell of the cabinet, not including the internal components).

Examples of products that are NOT subject to Buy America:

- The miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above components (or manufactured products that are not predominantly steel or iron) are not subject to Buy America coverage. Examples include, but are not limited to, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, etc. and
- Miscellaneous interior components inside cabinets.

Specific examples of items that have been evaluated for Buy America are available at:

- The list of items is available online at <http://www.iowadot.gov/traffic/utility/utility.html>.
- This list is general guidance for items that must be compliant or need not be compliant. Some of the items are manufacturer part number specific and others are general classes of items.
- This list is constantly updated as items are evaluated and added.

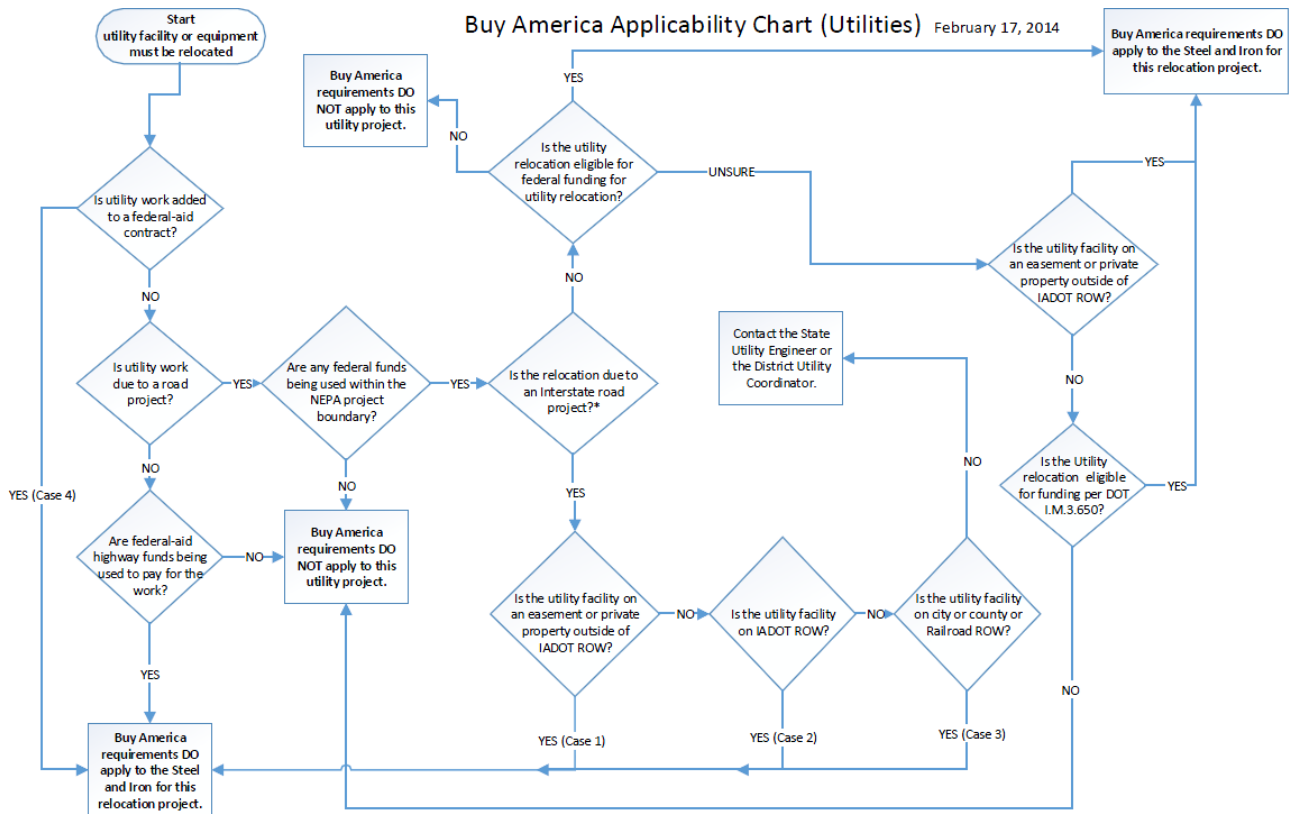


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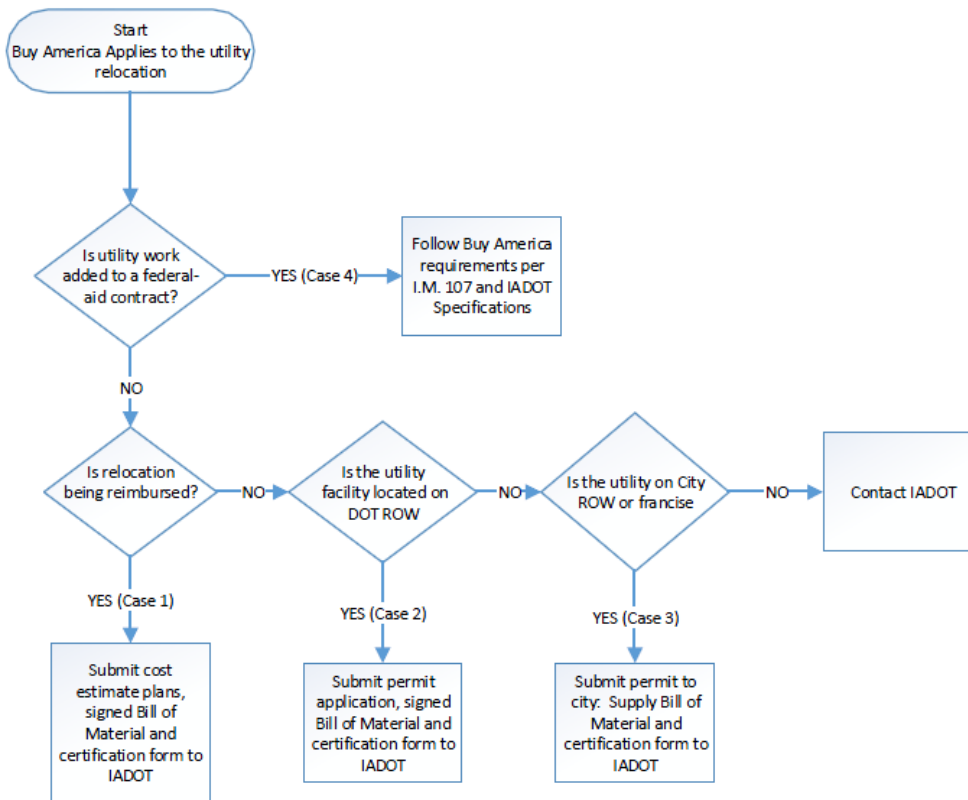
Flowcharts

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Definitions:
 FHWA: Federal Highway Administration
 NEPA: National Environmental Policy Act
 Interstate: Roads with the I designation
 ROW: Right of Way
 * Includes parts of US 218, IA58, and US20 in Waterloo

Buy America Compliance Flowchart (Utilities) February 17, 2014





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Bill of Materials (BOM)

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Bill of Materials (BOM):

The shown BOM (BA2) document is to be completed and returned with the utility permit or reimbursement agreement. Items/materials that do not contain steel or iron do not need to be included in the spreadsheet. Items that do contain steel or iron and are not mentioned specifically in section 10D-2 as examples of products that are NOT subject to Buy America should not be listed. The BOM should be signed by a utility representative and returned with the DOT agreement or permit. If the utility is on city or county ROW this form will need to be submitted to the DOT, to the district Engineering Operation Technician (EOT).

Utility fills out this section							DOT fills out this section		
Utility Company:				Agreement #			Name:		
Completed by:				Permit #			Date:		
Comments:				Date:			BA Applies		Comments
				Contain greater than 90% steel or iron (By Weight)	Item is precast concrete				
Include only items that contain steel or iron									
Item #	Part Number	Item Description	Quantity	(YES)	(NO)	(YES)	(YES)	(NO)	
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
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16									



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Certification Document

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Certification of Compliance (BA3):

The shown Certification of Compliance (BA3) document is to be completed and returned with the utility permit or reimbursement agreement. BA3 must be signed by a utility representative. If the utility to be relocated is on city or county ROW, BA3 shall be submitted to the district Engineering Operation Technician (EOT).



Buy America Certificate of Compliance - Utility Relocation (Iowa) **BA3**

ROW Project No.: _____

Construction Project No.: _____

Permit or Agreement No.: _____

The Iowa Department of Transportation and its subgrantees must assure that all manufactured products purchased or donated for permanent installation in a utility relocation under specific conditions are produced in the United States, or meet certain conditions. The referenced project above is a project where relocations do have to meet the Buy America requirements. Section 1518 of the MAP-21 legislation expanded 23 CFR § 635.410 to cover utility relocations. As such, each utility must provide as part of their facility relocation a certificate of compliance with the following requirements:

§661.6 Certification Requirement for Procurement of Steel or Manufactured Products.

If steel, iron, or manufactured products (as defined in §§661.3 and 661.5 of 49 CFR) are being procured, certificates to verify compliance shall be completed and submitted by each bidder/supplier in accordance with the requirements contained in §661.13(b) of 49 CFR. 23CFR § 635.410 lists possible exceptions.

Certification retention: Utility must retain certification paperwork for all Buy America materials for a period of 5 years from the date of issuance of the permit or reimbursement agreement. Audits of the certification paperwork by DOT personnel should be expected.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The utility company hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Printed Name _____

Company Name _____

Title _____



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Noncompliance

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Discussion:

The issue of noncompliance by utility companies is covered in this section. All federal funding on the associated DOT project may be rescinded after the fact so compliance with Buy America regulations is important. This can affect the IA DOT directly, but the utility would be affected indirectly as there is no mechanism to pass through the funding loss through to them. There are two scenarios where non-compliance with Buy America requirements can be a factor.

Case 1- noncompliant materials incorporation: Utility facility was relocated and it is subsequently discovered that non-compliant materials were incorporated (exceeding the minimal use amount, the greater amount of \$2,500 or 0.1% of the contract value). The DOT and Federal Highway Administration (FHWA) personnel will examine the severity, frequency of occurrence, replacement cost, assuage responsibility and determine culpability. Several options will be available and the appropriate action will be pursued. Any noncompliance will require: detailed explanation for state and federal officials, lead to increased auditing of future projects, and possible fraud charges if it is determined there was intentional misrepresentation of materials.

Options, not in order of preference and not mutually exclusive:

1. Remove the excess foreign iron and steel products and replace with domestic iron and steel products.
2. Withhold funding to the utility for relocation if this was a reimbursable moving expense.
3. The FHWA may withdraw funding for a portion or all of the projects within the associated NEPA project boundary. This would impact the IA DOT directly and the utility indirectly. Removal of the funds are not directly transferrable to the utilities.
4. If it is determined that the incorporation of noncompliant materials occurred after certification and done intentionally fraud charges may be forthcoming.

Case 2 - utility will not comply with or relocate because of Buy America requirements : Utility will not relocate due to additional cost, lead time, or they will relocate but will not comply with requirements and will not sign a document requiring them to do so before relocation occurs.

1. State may withhold all future permits for the utility for access to the state ROW in the district or statewide.
2. The utility may be liable to the contractor for delay expense.
3. The state may move the utility facilities at state expense and then invoice the utility for the expense.



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Buy America Links and Contacts

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Links for additional information:

Links for Help:

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

<http://cfr.vlex.com/vid/635-410-buy-america-requirements-19725360>

<http://www.gpo.gov/fdsys/pkg/CFR-2010-title49-vol7/xml/CFR-2010-title49-vol7-part661.xml>

<http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

<http://www.law.cornell.edu/uscode/text/23/313>

<http://www.fhwa.dot.gov/utilities/buyam.cfm>

List of Interstate DOT projects where BA will be applied:

<http://www.fhwa.dot.gov/utilities/buyam.cfm>

Contact Information:

Who to call with your questions on Iowa Buy America requirements:

Bryan Bradley

State Utility Engineer

Office of Traffic and Safety

Iowa Department of Transportation

Bryan.bradley@iowa.gov

(515)239-1014