The Michigan Department of Transportation (MDOT) and the Federal Highway Administration (FHWA) have partnered to address compliance with Buy America requirements on all state and local projects that include federal-aid funding.

Buy America requirements state that all steel and iron materials/products and manufacturing processes of the steel and iron material in a product, including but not limited to, smelting, rolling, melting, extruding, machining, bending, grinding, drilling, welding, galvanizing, and coating must occur within the United States. Work items and materials specifically shown in the project plans, specifications and contract documents and that are listed on the MDOT maintained Buy America step certification list that are permanently incorporated into the project, regardless if they are defined as temporary or not, must meet the requirements in the Special Provision for Source of Steel and Iron (Buy America).

Examples of products that are subject to Buy America coverage include, but are 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, pre-stressing/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, supporting structural members for signs, luminaires, or traffic control systems; and
• Steel or iron components of precast concrete products, such as reinforcing steel, wire mesh and pre-stressing or post-tensioning strands or cables.

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 (90 percent) steel or iron) are not subject to Buy America coverage. Examples include, but are not limited to, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, etc.

The contractor must obtain and submit manufacturer and/or fabricator step certification for all items identified on MDOT’s Buy America - Pay Items and Materials that Require Step Certification list. The most current list can be found at the following website under the Construction Field Services heading:
http://www.michigan.gov/mdot/0,1607,7-151-9622_11044_11367---,00.html

Step certification is defined as the certification by the respective manufacturer or fabricator for their specific process (step) of the fabrication or manufacturing process of the product, material or component. All process steps must occur in the United States unless otherwise stated in the Special Provision for Source of Steel and Iron (Buy America). The step certification documentation for all items on the MDOT Buy America - pay item and material list is to be submitted to the engineer in a package covering each step concurrent with material delivery and prior to incorporation into the project. Sample certification and step certification documents are shown in Appendix A. These documents have been developed to ensure that all companies provide a consistent certification document.

Buy America certification or step certification is required in the following cases:
- Pay items listed on the MDOT Buy America - Pay Items and Materials that Require Step Certification list.
- Pay items, work items, and/or products included in the notes section of the MDOT Buy America - Pay Items and Materials that Require Step Certification list.
- Pay items, work items, and/or products requiring Buy America certification or step certification in a contract document (e.g. special provisions, addendums, notice to bidder, etc.).

Buy America certification is not required for items that do not fall into one of the cases described above.

Construction Field Services (CFS) has contacted manufacturers/fabricators of qualified products, approved manufacturers, and tested stock suppliers regarding their compliance with Buy America for any products containing steel/iron shown on their respective lists within the MDOT Materials Source Guide. The responses from these companies related to Buy America compliance has been compiled into a single source document that notes the level of compliance
with Buy America. This document, **Buy America – Compliance Listing for Approved Manufacturers, Qualified Products List, and Tested Stock Suppliers**, can be found at the following website under the *Construction Field Services* heading: [http://www.michigan.gov/mdot/0,1607,7-151-9622_11044_11367---,00.html](http://www.michigan.gov/mdot/0,1607,7-151-9622_11044_11367---,00.html)

The companies on this list are either completely or partially compliant with Buy America as noted by the legend and each company name or they do not contain any steel/iron. All of these companies have provided Buy America certification documentation or correspondence that CFS will maintain on an annual basis.

If a contractor provides a product from a company noted as fully compliant with Buy America, the contractor will not be required to provide Buy America certification to the engineer. The Buy America certification will be maintained by CFS and will not be required to be located in the project files. The contractor will simply need to provide a bill of lading, product label, or shipping record to document that the products are from the respective manufacturer or fabricator. Project inspection staff will simply note the material source on their Inspector’s Daily Report (IDR) as the certification will be maintained by CFS.

If a contractor provides a product from a company noted as partially compliant (contains a portion of foreign steel or iron) with Buy America, the contractor is required to submit the respective Buy America certification from the manufacturer/fabricator. This documentation is required to be submitted prior to delivery or concurrent with material delivery and prior to incorporation, noting the value of foreign steel/iron. This value must be maintained by the contractor on their minimal usage of foreign steel/iron documentation.

Minimal use of foreign steel and iron is allowed provided the total invoice cost of foreign steel and iron permanently incorporated into the project does not exceed 0.1 percent (0.1%) of the total contract amount or $2,500, whichever is greater. The total invoice cost is the invoice amount charged for the steel or iron within the product, material or component delivered to the project. The contractor is required to maintain this minimal usage amount and provide the monetary values with product or material delivery prior to incorporation.

The use of foreign steel and iron under the minimal usage amount does not need to be approved by the FHWA. This amount is not considered a waiver to the Buy America requirements. The minimal usage amount is to be approved by the engineer as long as the maximum values are not exceeded. The contractor is to provide the engineer with the monetary amount of foreign steel and iron in each pay item, product, material or component. The contractor is also required to maintain a list of all foreign steel and iron incorporated into the project and provide this list as requested by the engineer.

The FHWA has established a Buy America waiver process for steel and iron products, components, and materials that are not domestically produced or processed, but are required per the contract. Waiver approvals are to be pursued during the preliminary engineering/design phase of projects and do not include after-the-fact discovery of an inadvertent incorporation of foreign iron and steel into a federal-aid project.
Buy America waivers are only issued per item and on a project basis and are not transferrable to other projects. These waivers are issued by the Washington D.C. headquarters of the FHWA and are not issued by project staff of any other agency or office. Waiver processing may be necessary after letting for products or components that are no longer domestically produced or processed. This discovery may impact a project schedule and, therefore, waiver discussions must occur as soon as possible upon discovery that domestically produced or processed steel or iron products or processes are not available. Managing offices are to work with the Construction Contracts Unit in the CFS Division for processing and submittal of the waiver request with supporting information to the FHWA Michigan Division Office. The FHWA approval process will take at least six months so prompt submittal of waiver requests are required. Supporting information that is to be provided to the Construction Contracts Unit is as follows and examples can be provided:

- MDOT Contract ID
- FHWA Project Number
- Federal Item Number
- Brief Project Description (from contract inquiry system)
- Original Project Amount
- Current Project Amount (at time of waiver submittal)
- Waiver Pay Item, Product or Process
- Cost of Waiver Pay Item, Product or Process
- Country of Origin of the Pay Item, Product, or Process (if known)
- Reasons for the Waiver Request
- Description of the efforts made by the contractor and MDOT to locate a domestically manufactured product
- Analysis of re-design of the project using alternate or approved equal domestic product

Buy America requirements are applicable for products and components when they arrive at the project work site. Once these products and components are on the work site it is expected that additional manufacturing and fabricating will not be necessary off site. However, if the products or components leave the work site and any process is completed related to the products and components, the steel and/or iron must again be certified by the affecting company. Any work at the project location related to bending, coating, welding, etc., completed by the contractor is not a part of the Buy America process and step certification is not necessary for this work, but Buy America step certification is necessary for any steel or iron material permanently incorporated into the project when delivered to the project work site.

For clarification, there is also a federal requirement and specification for Buy American (note the additional letter "n" in American). Buy American does not apply to road and bridge projects; it is a requirement for direct federal grants (e.g. aeronautics projects). Project staff must ensure that they receive the Buy America certification and not Buy American certification as there is a substantial difference between the two requirements.

No payment, including stockpile and delivered payments, is to be made for any materials or products containing steel or iron on the MDOT Step Certification List until all certifications have been approved by the engineer. The only exception to this requirement is for fabricated products.
that are stamped “Approved for Use” by MDOT’s Structural Fabrication Unit (internal or contracted inspection personnel) performing shop inspection at fabrication facilities (e.g. structural steel and structural precast concrete). The Structural Fabrication Unit verifies Buy America for materials with fabrication inspection as the basis for acceptance per the Materials Source Guide (MSG). All products that have been stamped “Approved for Use” by the Structural Fabrication Unit must be visually inspected after being unloaded at the project site before being accepted by the engineer. These products may then be partially or fully paid provided the inspector was given an “Approved for Use” stamped shipping document (Shipper) upon arrival of the products (structural steel) or after they receive a digitally signed shipping memorandum from the Structural Fabrication Unit (structural precast concrete). The fabricator is required to maintain a listing of all step certification materials that do not meet Buy America and obtain approval from the engineer prior to incorporation of foreign steel or iron into any fabricated products. MDOT’s Structural Fabrication Unit will not seek approval from the project office for incorporation of foreign steel or iron into a project, but will verify that the engineer has approved the use of foreign steel or iron prior to stamping “Approved for Use”. The Structural Fabrication Unit will issue partial (structural precast concrete inspection only) and final shipping memorandums to the engineer, for projects requiring structural steel and structural precast concrete fabrication inspection. These memorandums summarize the fabrication inspection and states Buy America has been verified at the fabrication facility. Please note that partial shipment memorandums are issued for structural precast concrete inspection projects to provide the inspector with the required documentation to make partial payment when requested.

This BOH IM and the revised Special Provision for Source of Steel and Iron (Buy America), 12SP105(A) dated 01/08/13, are effective immediately for all projects. The revised special provision can be incorporated into all existing projects as requested by the contactor via a contract modification for a zero ($0) cost change to the contract. If a cost increase is requested by the contractor the existing contract specifications are to be utilized.

If you have any questions please contact Jason Gutting, Engineer of Construction Operations, at guttingj@michigan.gov or 517-636-6334.
Appendix A

The following information is provided as a sample letter of step certification for Buy America compliance. Documentation must be provided on company letterhead.

Date

Company Name
Company Address
City, State Zip

Subject: Buy America Step Certification for Project (XXXXX-XXXXXXA)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided to the subject project is in full compliance with the Federal Highway Administration (FHWA) Buy America requirements as specified in Title 23 of the Federal Code of Regulations (CFR) Section 635.410.

Pay Item, Products and/or Materials

Joint, Expansion, E2
- Dowel Bar, Buy America compliance for cutting and coating the bars

Reinforced Concrete Pipe, 24 inch
- Reinforcing Steel, Buy America compliance for melting, manufacturing and cutting

Reinforced Concrete Pipe, 24 inch
- Reinforcing Steel, Buy America compliance for casting into final pipe product

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

It should be noted that a complete list of the associated manufacturing and/or fabricating steps is to be provided with the step certification documentation along with which steps the respective letter(s) are addressing. This will allow MDOT to document the steps in the process to ensure documentation compliance with federal regulations.
The following information is provided as a sample letter of certification for Buy America compliance. Documentation must be provided on company letterhead.

Date

Company Name
Company Address
City, State Zip

Subject: Buy America Certification for Project (XXXXX-XXXXXXX4)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the Federal Highway Administration (FHWA) Buy America requirements as specified in Title 23 of the Federal Code of Regulations (CFR) Section 635.410.

Pay Item, Products and/or Materials

*Water Main, DI, 24 in*
  - Buy America compliance.

*Joint, Expansion, E2*
  - Dowel Bar, Buy America compliance.

*Spun Concrete Poles*
  - Buy America compliance.

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

It should be noted that a complete list of the associated manufacturing and/or fabricating steps is to be provided with the step certification documentation along with which steps the respective letter(s) are addressing. This will allow MDOT to document the steps in the process to ensure documentation compliance with federal regulations.