

Minnesota Buy Clean Buy Fair Act

Waivers & Exemptions

Preface

The Minnesota Buy Clean Buy Fair Act, Minnesota Statute, Chapter 16B, Section 16B.312, Subdivision 2 gives the Commissioner of Administration authority to establish a maximum acceptable global warming potential (GWP) for each eligible material used in an eligible project. These materials include concrete, carbon steel rebar, structural steel, asphalt paving mixtures, and concrete pavement. Sub-categories may be established within each material category.

Effective January 15, 2026, GWP limits are established for ready-mix concrete used in buildings and carbon steel rebar used in buildings. Material categories and sub-categories which do not have GWP limits set at this time will require disclosure of Environmental Product Declaration (EPD) data to inform future threshold setting as a part of the program. For more details on GWP limits, please visit the Environmental Standards Procurement Task Force website at mn.gov/admin/government/purchasing-contracting/buy-clean. For more information on the research and collaboration that informed material-specific recommendations, please see the 2025 Environmental Standards Procurement Task Force Report which can be found at the Task Force website listed above.

Waiver & Exemption Justifications

For any eligible project, including (1) new construction of a state building larger than 50,000 gross square feet of occupied or conditioned space, (2) renovation of more than 50,000 gross square feet of occupied or conditioned space in a state building whose renovation cost exceeds 50 percent of the building's assessed value, or (3) new construction or reconstruction of two or more lane-miles of a trunk highway, project teams shall submit a compliant supply chain specific, Type III Environmental Product Declaration (EPD) that meets ISO 14025 and ISO 21930, or receive a Minnesota Department of Administration or Minnesota Department of Transportation (MnDOT) approved waiver for each eligible material/product.

Justifiable circumstances that might warrant a waiver are described below in the following sections.

1. [Technically Infeasible](#)
2. [Significant Increase in Project Cost / Financial Hardship](#)
3. [Significant Delay](#)
4. [Results in Sole-Source of Material](#)
5. [Emergency or Director's Order](#)
6. [Geographic Impracticability](#)

Conditions that justify waiver/exemption from providing EPDs:

1. Technically Infeasible

Minnesota's Buy Clean policy requires the submission of a supply chain-specific, facility-specific Type III Environmental Product Declaration (EPD) that meets ISO 14025 and ISO 21930 standards developed and maintained by the International Organization for Standardization (ISO) for all eligible construction materials/products. EPDs are produced according to requirements established in Product Category Rules (PCRs), which are a set of rules, guidelines, and procedures for developing an EPD for a specific product category. Per ISO 14025, EPDs and PCRs must include periods of validity, which are established when the documents are published. Rules for period of validity allow for appropriate development and maintenance of EPD and PCR content, including consideration of changes in relevant information affecting the PCR, and its selection procedure for predetermined parameters.

Some reasons why it might be technically infeasible to obtain compliant EPDs include, but are not limited to:

- The EPD is expired and cannot be renewed because the corresponding PCR has expired.
- The particular material is not covered by the scope of the relevant PCR - for example, a type of steel that is not included in the PCR for structural steel.

If providing an EPD for an eligible product would result in noncompliance with Minnesota State Building Codes or other applicable codes, then the EPD requirement may be waived. For example, if the material with an EPD does not meet the strength, serviceability, stability, or other structural requirements as necessary for the project.

To determine technical infeasibility, the Department of Administration or Transportation will review whether a valid PCR is available, current, and whether an eligible material is within the scope of an available PCR. The project's bid opening date will be used to determine the applicable PCR for an eligible material so that bidders and suppliers can fully consider those requirements at time of bid. Absence of an eligible material's PCR at time of bid would exclude EPD requirements for that eligible material.

2. Significant Increase in Project Cost / Financial Hardship

The development and publication of a supply chain specific, facility-specific, Type III EPD incurs a cost for the producer that is essentially fixed regardless of the quantity of material to be produced or the overall project size. There will be cases for a project where publication of the EPD, which will be included in the bid cost, is significant relative to the cost of the quantity of that material being bought and/or the total cost of the project.

For each of the eligible materials, the cost of developing a facility specific EPD may be spread over multiple projects purchasing these materials. It is anticipated that as more producers, manufacturers, and plants begin the setup process to produce EPDs, that cost per EPD to generate additional EPDs for slight variations on specific products will be reduced over time. Cost impacts will vary based on project specifics. It is at the discretion of the state agency/governing authority to grant or deny a waiver after reviewing the information provided by the project team, including cost analysis calculations, waiver request justifications, and other project details.

3. Significant Delay

The development and publication of a facility-specific EPD takes an amount of time for the producer that is essentially fixed regardless of the quantity of material to be produced or the overall project size. There will be cases where the time required to develop and publish the EPD is significant relative to the duration of the project or would otherwise significantly delay the start or completion of the project. The estimated time to develop a facility specific EPD will vary depending on the LCA software and/or program operator, existence of current/updated governing PCR requirements, and data availability. Given the minimum project size and expected minimum duration of eligible Buy Clean projects that would be covered in program requirements, it is expected that teams will typically be able to procure a material with a facility specific EPD prior to installation without causing significant delay to the project. In some cases, a temporary waiver may be provided by state agencies if it is anticipated there will be significant delays in procuring an EPD in the required timeframe.

4. Results in Sole-Source of Material

Exemption is allowed where there is only one viable material supplier in order to allow for competitive pricing. Examples include where no other producers or vendors have made EPDs available or do not meet the GWP threshold. Refer to the Minnesota Department of Administration's Office of State Procurement (OSP) Policy 26-01: Single Source Procurement requirements here:

mn.gov/admin/osp/government/procuregoodsandgeneralservices/authority-for-local-purchasing/acquisitions-purchasing-policies.jsp

5. Emergency or Director's Order

An emergency, as defined in [Minnesota Statute 16C.02](#) may be used as the basis of a waiver request. The approval correspondence by the Procurement Official must be provided with the waiver request.

6. Geographic Impracticability

Some reasons why it might be geographically impractical to obtain compliant EPDs include, but are not limited to:

- Product is more readily available across state boundaries (outside of Minnesota)
- Product is not available near project site and must be transported from a manufacturer or facility farther away (this could result in significant increase in project cost, project delay, and/or a single source situation)

Carbon Budget Exception Pathway

If a project team anticipates one or more materials on the project will exceed GWP limits, the team may apply for an exception, demonstrating that the Carbon Budget within a single product category meets the requirement. Project teams must apply for an exception prior to procurement and installation of any materials/products on site. Exceptions via the Carbon Budget approach will be reviewed by the state. Note that the Carbon Budget approach may only be used for products within the same material category, i.e. ready-mix concrete, structural steel, asphalt mixtures, etc.

Table 1 below shows an example project with four ready-mix (cast-in-place) concrete mix designs. Though one or more of the concrete mixes may exceed the GWP limit for the individual mix, as long as the GWP of all of the mixes on the project are below the carbon budget, then the project would meet the requirements for this expectation pathway. The total embodied carbon of all concrete mix designs on a project shall not exceed the allowable Carbon Budget, which is calculated by multiplying the volume of concrete for each mix design strength classification by the corresponding GWP limit. In other words, a single mix design may exceed the GWP limit as long as you come in below the GWP limits for other mixes on the project (weighted by volume).

Table 1: Ready-Mix Concrete - Carbon Budget Exception Pathway Example (metric units)

Mix No.	Mix Strength/Description	Quantity (m ³)	GWP Limit (kgCO ₂ e/m ³)	Qty x GWP Limit = Carbon Budget (kgCO ₂ e)	Actual GWP from EPD (kgCO ₂ e/m ³)	Qty x GWP Actual Carbon (kgCO ₂ e)
1	4000psi - FOUNDATIONS	850	312	265,200	292	248,200
2	4500psi - EXTERIOR SLABS AND WALLS	400	342	136,800	332	132,000
3	5000psi - INTERIOR SOG/SLAB ON METAL DECK	550	372	204,600	368	202,400
4	6000psi- COLUMNS/PIERS AND INTERIOR WALLS	300	394	118,200	412	123,600
	TOTALS	2,100		<u>724,800</u>		<u>707,000</u>

The above ready-mix concrete example shows that the *Actual Carbon* total of 707,000 kgCO₂e is less than the *Carbon Budget* of 724,800 kgCO₂e, which would demonstrate compliance through the exception pathway. A similar process may be utilized for other products within the same subcategory, such as asphalt mixtures (limited to products that fall within the same PCR criteria).

Industry-Wide EPDs

If a supply chain specific, facility-specific EPD cannot be provided due to any of the above Waiver Justifications / Exemptions, in some cases, an industry-wide EPD may be allowed as a proxy for estimating GWP impacts. Teams must apply for a waiver and describe the steps taken in an attempt to obtain a supply chain specific, facility-specific EPD. It is ultimately up to the discretion of the state agency / authority to grant or deny a waiver after reviewing the information provided by the project team, at which point an industry-wide EPD might be deemed acceptable under certain circumstances.

Waiver Requests

If, during the progress of an eligible state contract, an EPD that meets the requirements of the contract and the GWP guidelines cannot be provided for any of the above listed Waiver and Exemption Justifications, the prime contractor may request a waiver from the agency. The state agency may determine that a waiver is appropriate and issue a waiver from these guidelines.

When requesting a waiver, the contractor must document the following for the state agency's consideration:

- a. the materials/products in question, including a detailed description of the product (for example: Ready-mix Concrete, 6,000psi, high-early strength, post-tensioned slabs, MixNoP6174);
- b. for concrete and asphalt mixes, provide documentation of mix composition if no EPD is available;
- c. the reason(s) for the waiver/exemption: a narrative describing which Waiver and Exemption Justifications apply to the project and how they apply to the project;
- d. a narrative describing what steps were taken in an effort to meet the Buy Clean requirements before requesting a waiver;
- e. any other factors affecting the decision to grant a waiver.

Prior to close of contract, the contractor should file a document with the agency that records actions taken to attempt meeting the Buy Clean requirements, and any actions taken to reduce GHG emissions on the project.

If a State agency head believes a waiver is warranted, the documented waiver must be signed by the head of the State agency, or a person designated to act in the place of the head of the State agency. The documented waiver must be included in the record for the relevant contract or project.

Glossary

The following key terms and definitions are based on several of which are included in Minnesota legislative language (Minnesota Statute 16B.312) to date or have been established by the Task Force for the purposes of this program.

Carbon steel means steel in which the main alloying element is carbon and whose properties are chiefly dependent on the percentage of carbon present (16B.312.1).

Electric arc furnace means a furnace that produces molten alloy metal and heats the charge materials with electric arcs from carbon electrodes (16B.312.1).

Eligible project means (16B.312.1):

- 1) new construction of a state building larger than 50,000 gross square feet of occupied or conditioned space;
- 2) renovation of more than 50,000 gross square feet of occupied or conditioned space in a state building whose renovation cost exceeds 50 percent of the building's assessed value; or
- 3) new construction or reconstruction of two or more lane-miles of a trunk highway.

Environmental Product Declaration (EPD) means a supply chain specific type III environmental product declaration that (16B.312.1):

- 1) contains a material production life cycle assessment of the environmental impacts of manufacturing a specific product by a specific firm, including the impacts of extracting and producing the raw materials and components that compose the product;
- 2) is verified by a third party; and
- 3) meets the ISO 14025 standard developed and maintained by the International Organization for Standardization (ISO).

Global Warming Potential (GWP) has the meaning given in section 216H.10, subdivision 6: *"Global warming potential" or "GWP" means a quantitative measure of the potential of an emission of a greenhouse gas to contribute to global warming over a 100-year period expressed in terms of the equivalent emission of carbon dioxide needed to produce the same 100-year warming effect, as reported in Fourth Assessment Report: Climate Change 2007, Intergovernmental Panel on Climate Change.* (216H.01, referenced in 16B.312.1)

Greenhouse gas has the meaning given to "statewide greenhouse gas emissions" in section 216H.01, subdivision 2: *"Statewide greenhouse gas emissions" include emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride emitted by anthropogenic sources within the state and from the generation of electricity imported from outside the state and consumed in Minnesota. Carbon dioxide that is injected into geological formations to prevent its release to the atmosphere in compliance with applicable laws, and carbon dioxide associated with the combustion of fuels other than coal, petroleum, and natural gas are not counted as contributing to statewide greenhouse gas emissions.* (216H.01, referenced in 16B.312.1)

Integrated steel production means the production of iron and subsequently steel primarily from iron ore or iron ore pellets (16B.312.1).

Material production life cycle means an analysis that includes the environmental impacts of all stages of a specific product's production, from mining and processing the product's raw materials to the process of manufacturing the product (16B.312.1).

Product Category Rule (PCR) is a set of standards specific to a certain material/product that defines the rules and requirements for creating life cycle assessments (LCAs), and it is a critical component of EPD development. PCRs ensure that LCAs and EPDs for the same type of product are developed using the same methodology, data requirements, and reporting standards.

Rebar means a steel reinforcing bar or rod encased in concrete (16B.312.1).

Secondary steel production means the production of steel from primarily ferrous scrap and other metallic inputs that are melted and refined in an electric arc furnace (16B.312.1).

State building means a building owned by the state of Minnesota or a Minnesota state agency (16B.312.1).

Structural steel means steel that is used in structural applications in accordance with industry standard definitions (16B.312.1).

Supply chain specific means an environmental product declaration that includes specific data for the production processes of the materials and components composing a product that **contribute at least 80 percent of the product's material production life cycle global warming potential**, as defined in ISO standard 21930 (16B.312.1). *Note that PCRs for some materials provide additional guidance and requirements for inclusion of supply chain specific information. Inclusion of supply chain specific (i.e. primary) upstream data for processes with large impacts is recommended, and may be required in PCRs for certain materials, in lieu of secondary data.*