

ARRA Buy American Overview

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Buy American Provision

This Web page contains guidance for financial assistance recipients regarding Buy American Recovery Act provisions under projects funded by the American Recovery and Reinvestment Act of 2009 and administered by the Office of Energy Efficiency and Renewable Energy (EERE).

The Buy American provision in the American Recovery and Reinvestment Act of 2009 (section 1605 of Title XVI), provides that, subject to three listed exceptions (nonavailability, unreasonable cost, and inconsistent with the public interest), none of the funds appropriated or otherwise made available by the Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all the iron, steel, and manufactured goods used are produced in the United States. The law also requires that this provision be applied in a manner consistent with U.S. obligations under international agreements.

Please check this page regularly, as the Office of Energy Efficiency and Renewable Energy will provide updates as further guidance is released.

New Guidance and FAQs

The following documents are available as Adobe Acrobat PDFs. [Download Adobe Reader](#).

- Guidance on Documenting Compliance with the Recovery Act Buy American Provisions ([PDF 136 KB](#))
- Guidance on Manufactured Goods and Substantial Transformation for Financial Assistance Awards ([PDF 122 KB](#))
- Recovery Act Buy American Guidance on Implementing the Agreement Between Canada and the United States of America on Government Procurement ([PDF 74 KB](#))
- International Trade Agreements and the Recovery Act Buy American Provisions: Frequently Asked Questions ([PDF 66 KB](#))
- Computer Hardware and Software: Frequently Asked Questions ([PDF 48 KB](#))

EERE Buy American Waivers

If DOE issues any waivers to the Buy American Recovery Act provisions, they will be published in the *Federal Register* within two weeks of issuance, posted on this Web page, as well as made available to the relevant EERE project and contracting officers.

- *Nationwide Nonavailability Waiver for 7 Items* ([PDF 207 KB](#))
- *De Minimis Public Interest Waiver* ([PDF 214 KB](#))
- *Nationwide Limited Public Interest Waiver for LED Lighting and HVAC Units* ([PDF 56 KB](#))
- *Nationwide Categorical Waivers for Electronic Ballasts, LED Traffic Lights, and CFLs* ([PDF 192 KB](#)).

Additional Information

For more information on the Buy American provision, please see the following documents.

- EERE Request for Information on Recovery Act Buy American Provisions ([PDF 152 KB](#))
This is a copy of what DOE submitted to the Federal Register for publication. Stakeholders should also refer to the Federal Register version when it is published.
- Guidance on the Buy American Provisions as Applied to EERE Projects funded by ARRA ([PDF 124 KB](#))
- Instructions for Waiver Requests ([PDF 34 KB](#))
- Frequently Asked Questions about the Buy American Provision ([PDF 36 KB](#))

If you have any questions about the Buy American provision, please contact buyamerican@ee.doe.gov.

Printable Version

EERE Request for Information on Recovery Act Buy American Provisions



DOE is requesting information from stakeholders on questions pertaining to the Buy American provisions. See the guidelines on what to include and how to respond to the RFI ([PDF 152 KB](#)). [Download Adobe Reader](#).

This is a copy of what DOE submitted to the Federal Register for publication. Stakeholders should also refer to the Federal Register version when it is published.

- Section 1605 of the American Recovery and Reinvestment Act (Recovery Act)
- 2 CFR 176 (Government-wide guidance): “Requirements for Implementing...Section 1605”
- “None of the funds appropriated for or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless—
 - All of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.” (2 CFR 176.70)

Three Exemptions

1. **Nonavailability** (not produced or manufactured in sufficient and reasonably available quantities of a satisfactory quality)
2. **Unreasonable cost** (will increase cost of the *overall project* by more than 25%)
3. **Inconsistent with the public interest**

- Follow the instructions outlined in the “Instructions for Waiver Requests” on the website, and use the template on page 6 of the RFI.
- Nonavailability Waiver Request Template almost ready.
- Technical information is sent to Manufacturing Extension Partnership for “supplier scouting” and to industry trade associations, unions, etc to search for domestic manufacturers.

- There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurs in the United States. (See 2 CFR 176.70(a)(2)(ii).
- So what constitutes “manufacturing?”
- “Substantial Transformation” Guidance
- http://www1.eere.energy.gov/recovery/pdfs/eere_substantial_transformation_guidance.pdf

- “The responsibility for determining whether the parts are components of a larger manufactured good, and whether the good is manufactured in the United States rests with the Recovery Act financial assistance recipient.”
- We have given you the tools you need
- DOE Buy American Coordinator and HQ procurement lawyers not empowered to make “substantial transformation” determinations

- What records are needed to document compliance with the Buy American provisions?
- Grantees are required to flow down the Buy American requirements to subrecipients, and in any subawards or subcontracts.
- Contractors and vendors should be held responsible for complying with the Buy American provisions.
- Grantees, sub-recipients and subawardees may ask contractors and vendors for letters of certification.

- State and local governments and tribes must follow their own procurement policies and procedures, per 10 CFR 600.236, “Procurement”, and are expected to maintain maximum oversight over their project and procurement activities with regards to Buy American compliance.
- Recipients should maintain documentation at a level they feel is appropriate to show compliance with the Recovery Act Buy American provisions.

- A list of recommended documentation is outlined in the Guidance.
- Includes: “other reasonable documentation per the discretion of the state, local, or tribal government financial assistance recipient demonstrating compliance with the Buy American provisions.

International Agreements

- Obligation only applies to projects valued at or above \$7,804,000.

- Many States and Sub-Federal Entities have specific exclusions from certain Agreements

- See Appendix Subpart B of 2 CFR 176

<http://edocket.access.gpo.gov/2009/pdf/E9-9073.pdf>

- February 16: New U.S.—Canada agreement in effect. This gives Canada access to EECBG and SEP projects above \$7.804 million.

- For cities, municipalities, counties, and tribes Canada is the *only country* with access to EECBG projects (above \$7.8 million) under the Buy American provisions.
- No other international trade agreements (including NAFTA, CAFTA, etc) cover local government procurement.
- States can see Appendix Subpart B of 2 CFR 176 <http://edocket.access.gpo.gov/2009/pdf/E9-9073.pdf>
- DOE HQ will not help interpret obligations under international trade agreements for sub-federal entities.

Nonavailability Waivers Issued

February 11th, 2010

- LED traffic lights and signals
- Fluorescent electronic lighting ballasts
- Compact fluorescent light bulbs
- Small exceptions listed in official waiver
 - http://www1.eere.energy.gov/recovery/pdfs/buy_american_waivers.pdf
- These waivers are both retrospective and prospective. Cover all procurement past, present, and future.

Public Interest Waiver

March 19, 2010

- Nationwide limited public interest waivers for purchases of LED lighting and HVAC units before March 31, 2010.
- The limited waivers for these two categories of manufactured goods are intended to resolve the confusion surrounding the characterization of LED lights and HVAC units as “supply” items, and thus not subject to the Recovery Act Buy American provisions.
- The concept of a “supply” item has no significance in the context of section 1605 (the Buy American provisions) of the Recovery Act.

- The concept of the “supply item” has its origins in the Buy American Act (41 U.S.C. 10a - 10d) and the Federal Acquisition Regulation (FAR), *neither of which applies to section 1605* (the Buy American provisions) of the American Recovery and Reinvestment Act of 2009 (Recovery Act; Pub. L. 111-5).
- *To be absolutely clear: the concept of a “supply item” has no relevance in the context of section 1605 of the Recovery Act.*

May 24, 2010

Nonavailability Waiver for 7 Items:

1) Non-residential programmable thermostats; 2) commercial scale fully-automatic wood pellet boiler systems; 3) facility and small district wood pellet and chip boiler furnaces; 4) variable refrigerant flow zoning and inverter-driven ductless mini-split HVAC systems; 5) electrical “smart” strips/surge protectors; 6) gas or propane tankless water heaters up to 200,000 BTUs; 7) and fully-enclosed continuous composting systems

De Minimus Waivers Issued

May 24, 2010

- “De Minimus” waiver for incidental items up to a limit of no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project.

- Q: Are LED streetlights a “supply item”, and thus exempt from “Buy American” requirements?
- A: No. The concept of a “supply item” has no relevance in the context of section 1605 of the Recovery Act.
- Q: What are the requirements that may be imposed on products produced or assembled domestically using off-shore components?
- A: There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurs in the United States.

- Q: Are there any American manufacturers of lighting ballasts?
- A: Florescent electronic lighting ballasts received a “nonavailability” waiver, with the exception of dimming ballasts.
- Q: Are LED streetlights exempt from the Buy American requirement?
- A: No, and there are a handful of domestic LED streetlight manufacturers.

- Q: How do we find products that comply with the “Buy American” requirement? We hear conflicting claims from manufacturers.
- A: DOE is compiling a list of manufacturing trade associations. As of now we cannot provide a list of specific manufacturers.
- Q: Is “substantially transformed” the same as the definition of “manufactured”?
- A: Yes. Please see the guidance on “substantial transformation.”

- Q: A city receives \$500K in EECBG funds and is looking to leverage that \$500K into a larger energy savings performance contract of \$2.5M. The \$500K is being used as a buy down of the performance contract to make the term shorter. Has that energy savings performance contract now been funded in part by ARRA funds and is now subject to the Buy American requirements?
- A: If the ARRA funds are mixed with non-ARRA funds into one contract for the same “project” then yes, most likely the Buy American provisions will apply to the entire pool of funds.

- Q: A project receives ARRA funding after having been through the budgeting and contracting phase. Is the entire project now required to comply with the Buy American requirements? Are contractors entitled to a change order for the cost impact to comply with the new requirement, or has a blanket waiver been issued/or will be issued for this type of work?
- A: Good question. Good candidate for a “public interest” waiver.
- FAQ resources exist; EECBG searchable FAQ database; new FAQ document on its way shortly.

- Questions can be submitted to: buyamerican@ee.doe.gov
- Website:
http://www1.eere.energy.gov/recovery/buy_american_provision.html