

Buy American Provisions



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www1.eere.energy.gov/recovery/buy_american_provision.html

American Recovery and Reinvestment Act: Buy American Provision - Windows Internet Explorer

http://www1.eere.energy.gov/recovery/buy_american_provision.html

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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, unless one of three listed exceptions applies (nonavailability, unreasonable cost, and inconsistent with the public interest), and a waiver is granted, 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.


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

Guidance Documents

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

- Guidance on the Term "Project" Under the Recovery Act Buy American Provisions (PDF 42 KB)

EERE Domestic Nonavailability Waiver Request Form



A fillable form for EERE grantees to submit requests for waivers of the Buy American provisions on the basis of domestic nonavailability.

- Read the Waiver Request Form (PDF 92 KB)

Buy American Provision Webinar (PDF 418 KB)

EERE Buy American Project Leader Benjamin Goldstein presented this Webinar on June 9, 2010, to State Energy Program (SEP) and Energy Efficiency and Conservation Block Grant (EECBG) recipients.

Authority



**“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)

Manufactured Goods



- ❖ **ONLY FOR PUBLIC BUILDING/PUBLIC WORK**
- ❖ **INCORPORATED INTO THE BUILDING OR WORK**
- ❖ **PROCESSED INTO A SPECIFIC FORM AND SHAPE;
OR COMBINED WITH OTHER RAW MATERIAL TO
CREATE A MATERIAL THAT HAS DIFFERENT
PROPERTIES THAN THE PROPERTIES OF THE
INDIVIDUAL RAW MATERIALS= “SUBSTANTIAL
TRANSFORMATION”**

2 C.F.R. § 176.140(A)(1).

What is a Domestic Manufactured Good?



PRODUCTION OR MANUFACTURING FACILITY (SUBSTANTIAL TRANSFORMATION) IS PHYSICALLY LOCATED IN THE UNITED STATES OR ITS TERRITORIES

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.

2 CFR 176.70(A)(2)(II).

THE DOMICILE OF THE PARENT COMPANY, SUBSIDIARY, DISTRIBUTOR, OR SUPPLIER IS NOT RELEVANT FOR DETERMINING COMPLIANCE WITH THE RECOVERY ACT BUY AMERICAN PROVISION.

Substantial Transformation



**MUST OCCUR IN UNITED STATES, THE SUBSTANTIAL
TRANSFORMATION GUIDANCE:**

**[HTTP://WWW1.EERE.ENERGY.GOV/RECOVERY/PDFS/EERE S
UBSTANTIAL TRANSFORMATION GUIDANCE.PDF](http://www1.eere.energy.gov/recovery/pdfs/eere_s
ubstantial_transformation_guidance.pdf)**

**PROVIDES 3 QUESTIONS, ANSWERING THESE (OR HAVING
THE VENDOR ANSWER THESE) SHOULD CLARIFY
SUBSTANTIAL TRANSFORMATION**

Waivers



**CAN ONLY BE DETERMINED BY THE ASSISTANT SECRETARY
FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY**

- 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**

Waiver Process



**NONAVAILABILITY/UNREASONABLE COST WAIVER REQUEST
FORM**

[HTTP://WWW1.EERE.ENERGY.GOV/RECOVERY/PDFS/EERE BUY AMERICAN NONAVAILABILITY TEMPLATE.PDF](http://www1.eere.energy.gov/recovery/pdfs/eere_buy_american_nonavailability_template.pdf)

**TECHNICAL INFORMATION IS SENT TO
MANUFACTURING EXTENSION PARTNERSHIP FOR “SUPPLIER
SCOUTING” AND TO INDUSTRY TRADE ASSOCIATIONS,
UNIONS, ETC TO SEARCH FOR DOMESTIC MANUFACTURERS.**

Documentation



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.

Documentation- Continued



***GUIDANCE ON DOCUMENTING COMPLIANCE WITH THE
RECOVERY ACT BUY AMERICAN PROVISIONS***

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.

International Agreements



**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](http://edocket.access.gpo.gov/2009/pdf/e9-9073.pdf)

**FEBRUARY 16: U.S.—CANADA AGREEMENT EFFECTIVE DATE.
THIS GIVES CANADA ACCESS TO EECBG AND SEP
PROJECTS ABOVE \$7.804 MILLION.**

Computer Hardware and Software



SOFTWARE IS NOT A MANUFACTURED GOOD- NOT SUBJECT TO BA

**IS THE COMPUTER HARDWARE “BROUGHT TO THE
CONSTRUCTION SITE FOR INCORPORATION INTO THE
BUILDING.”**

**IS IT PERMANENTLY ATTACHED TO OR FIXED TO REAL
PROPERTY?**

DETERMINATION MUST BE MADE BY THE GRANTEE.

Nonavailability Issued Waivers



‘BLANKET’ WAIVERS THAT ARE BOTH RETROSPECTIVE AND PROSPECTIVE. COVER ALL PROCUREMENT PAST, PRESENT, AND FUTURE.

GRANTEES WHO HAVE THE NEED FOR A PRODUCT ALREADY COVERED IN A WAIVER NEED TO DOCUMENT COMPLIANCE, BUT DO NOT NEED TO APPLY FOR A WAIVER.

17 TOTAL ITEMS AS OF AUGUST 11, 2010

Expired Public Interest Waiver



**NATIONWIDE LIMITED PUBLIC INTEREST
WAIVERS FOR PURCHASES OF LED LIGHTING
AND HVAC UNITS BEFORE MARCH 31, 2010.**

**MUST HAVE TAKEN SUBSTANTIAL STEPS
TOWARDS PROCUREMENT AS DEFINED IN
WAIVER**

Solar Public Interest Waiver



- 1) DOMESTICALLY-MANUFACTURED MODULES CONTAINING FOREIGN-MANUFACTURED CELLS,**
- 2) FOREIGN-MANUFACTURED MODULES, WHEN COMPRISED OF 100 PERCENT DOMESTICALLY-MANUFACTURED CELLS, AND**
- 3) ANY ANCILLARY ITEMS AND EQUIPMENT (INCLUDING, BUT NOT LIMITED TO, CHARGE CONTROLLERS, BREAKERS AND FUSES, RACKS, TRACKERS, CABLES AND ALL OTHERWISE INCIDENTAL EQUIPMENT WITH THE EXCEPTION OF INVERTERS AND BATTERIES) WHEN UTILIZED IN A SOLAR INSTALLATION INVOLVING A U.S. MANUFACTURED PV MODULE, OR A MODULE MANUFACTURED ABROAD BUT COMPRISED EXCLUSIVELY OF DOMESTICALLY-MANUFACTURED CELLS.**

De Minimis Waiver



**DE MINIMIS 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.**

RED FLAGS!!!!

BUY AMERICAN IS NOT!!!

**A BALANCING OR PERCENTAGE OF CONTENT TEST-
IT DEPENDS UPON THE LOCATION OF FINAL
MANUFACTURING (“SUBSTANTIAL
TRANSFORMATION”)**

**SUBJECT TO NAFTA FOR PROJECTS UNDER 7.8
MILLION DOLLARS**

**THE “BUY AMERICAN CLAUSE” OF THE FAR- WATCH
OUT FOR MANUFACTURERS USING THE TERMS
“SUPPLY ITEM” “BUY AMERICAN CLAUSE”, “BUY
AMERICAN ACT” OR “BUY AMERICAN CONTENT”
COMPLIANT- THIS IS NOT THE STANDARD, AND THE
PRODUCT MAY NOT BE COMPLIANT WITH SECTION
1608 OF THE RECOVERY ACT.**

In Summary

GUIDANCE AND FAQs

- GUIDANCE ON DOCUMENTING COMPLIANCE WITH THE RECOVERY ACT BUY AMERICAN PROVISIONS
- GUIDANCE ON MANUFACTURED GOODS AND SUBSTANTIAL TRANSFORMATION FOR FINANCIAL ASSISTANCE AWARDS
- RECOVERY ACT BUY AMERICAN GUIDANCE ON IMPLEMENTING THE AGREEMENT BETWEEN CANADA AND THE UNITED STATES OF AMERICA ON GOVERNMENT PROCUREMENT
- INTERNATIONAL TRADE AGREEMENTS AND THE RECOVERY ACT BUY AMERICAN PROVISIONS: FREQUENTLY ASKED QUESTIONS
- COMPUTER HARDWARE AND SOFTWARE: FREQUENTLY ASKED QUESTIONS
- GUIDANCE ON THE BUY AMERICAN PROVISIONS AS APPLIED TO EERE PROJECTS FUNDED BY ARRA (OLDIE BUT GOODIE)

EERE BUY AMERICAN WAIVERS

- NATIONWIDE NONAVAILABILITY WAIVERS (4 FOR A TOTAL OF 22 ITEMS)*
- DE MINIMIS PUBLIC INTEREST WAIVER*
- SOLAR PUBLIC INTEREST WAIVER AS AMENDED*
- NATIONWIDE LIMITED PUBLIC INTEREST WAIVER FOR LED LIGHTING AND HVAC UNITS*

QUESTIONS???



ADDITIONAL QUESTIONS CAN BE SUBMITTED TO:
BUYAMERICAN@EE.DOE.GOV

WEBSITE:
[HTTP://WWW1.EERE.ENERGY.GOV/RECOVERY/BUY AMERICAN PROV
ISION.HTML](http://www1.eere.energy.gov/recovery/buy_american_provision.html)