



U.S. DEPARTMENT OF  
**ENERGY**

Energy Efficiency &  
Renewable Energy

# BUY AMERICAN PROVISIONS



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**BUY AMERICAN SUPPORT**  
**NEW WEST TECHNOLOGIES, SUPPORTING EERE**

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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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## American Recovery & Reinvestment Act

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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 \(PDF 52 KB\)](#)
- [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 \(PDF 74 KB\)](#)
- [Guidance on the Buy American Provisions as Applied to EERE Projects funded by ARRA \(PDF 124 KB\)](#)

### Frequently Asked Questions

These documents provide answers to some of the most frequently asked questions

### FEATURES



[Waiver Application: Apply for a nonavailability or unreasonable cost waiver](#)



[Overview of the EERE Waiver Process](#)



[View All Waivers Issued by EERE](#)



[Buy American Provision Webinar by Benjamin Goldstein, Buy American Coordinator](#)

# AUTHORITY



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“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



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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?



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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



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MUST OCCUR IN UNITED STATES, THE SUBSTANTIAL TRANSFORMATION  
GUIDANCE:

[HTTP://WWW1.EERE.ENERGY.GOV/RECOVERY/PDFS/EERE\\_SUBSTANTIAL\\_TRANSFORMATION\\_GUIDANCE.PDF](http://www1.eere.energy.gov/recovery/pdfs/eere_substantial_transformation_guidance.pdf)

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



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

**NONAVAILABILITY** (NOT PRODUCED OR MANUFACTURED IN  
SUFFICIENT AND REASONABLY AVAILABLE QUANTITIES OF A  
SATISFACTORY QUALITY)

**UNREASONABLE COST** (WILL INCREASE COST OF THE OVERALL  
PROJECT BY MORE THAN 25%)

INCONSISTENT WITH THE **PUBLIC INTEREST**



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



## 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 BY THE GRANTEES. THE GRANTEES ARE ACCOUNTABLE FOR THE SUBGRANTEES, CONTRACTORS AND VENDORS ACTIONS.

GRANTEES, SUB-RECIPIENTS AND SUBAWARDEES MAY ASK CONTRACTORS AND VENDORS FOR LETTERS OF CERTIFICATION.

# Letters of Certification



## Look for:

- Product name and model number
- Location(s) of manufacturing activities
- Manufacturer contact information
- Description of manufacturing process

## Be wary of:

- Vague certifications
- Claims that a product is covered by trade agreements
- Claims that a product is covered under a waiver
- Information on percentage of U.S.-made components(or Supply Item, FAR reference)
- Any mention of assembly

## Broad statements are insufficient:

- “We comply with the Buy American requirement”
- “All products are American”
- “This project meets Buy American”
- “We are certified Buy American compliant”
  
- There is no agency that “certifies” Buy American compliance
  
- Documentation should be specific about the location of the manufacturing (city and state)

# 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.**



## 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.



OBLIGATION ONLY APPLIES TO PROJECTS VALUED AT OR ABOVE  
\$7,804,000.

THERE ARE NO TRIBAL PROJECTS WITH A VALUE THIS HIGH- THUS  
INTERNATIONAL AGREEMENTS DO NOT APPLY- YOU MUST BUY US  
GOODS!!!!!!

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.



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.



## ISSUED WAIVERS:

[HTTP://WWW1.EERE.ENERGY.GOV/RECOVERY/BA\\_WAIVERS.HTML](http://www1.eere.energy.gov/recovery/ba_waivers.html)

‘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.

27 TOTAL ITEMS AS OF NOVEMBER 5, 2010



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



- ❖ DOMESTICALLY-MANUFACTURED MODULES CONTAINING FOREIGN-MANUFACTURED CELLS,
- ❖ FOREIGN-MANUFACTURED MODULES, WHEN COMPRISED EXCLUSIVELY OF DOMESTICALLY-MANUFACTURED CELLS, AND
- ❖ 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 PUBLIC-INTEREST WAIVER



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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.

# 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 (5 FOR A TOTAL OF 27 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](mailto: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)