



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

Browser address bar and menu showing the URL http://www1.eere.energy.gov/recovery/buy_american_provision.html and various browser controls.

American Recovery & Reinvestment Act

Search box for American Recovery & Reinvestment Act with a SEARCH button.

EERE » American Recovery & Reinvestment Act » Buy American Provision

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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
L_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**

WAIVERS



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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**

WAIVER PROCESS



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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.



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



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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.



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.

NON-AVAILABILITY



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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.

22 TOTAL ITEMS AS OF SEPTEMBER 30, 2010

NOVEMBER NON-AVAILABILITY WILL INCLUDE 5-7 MORE ITEMS, AND WILL BE ISSUED ON FRIDAY



LED TRAFFIC SIGNALS



As of December 1st, the waiver for LED traffic Signals will be withdrawn

INCREASED JOBS BY 165%
SINCE 2008 LEVELS AND NOW CURRENTLY
EMPLOYS 130 SKILLED AND DIRECT LABOR
EMPLOYEES AT ITS MANUFACTURING FACILITY
IN ROXBORO, NC.
THIS MEANS 5000 LIGHTS/DAY, MADE IN THE
USA!

JOB FACTS:

JOBS IN 2008	49
CURRENT EMPLOYMENT	130
PROJECTED (JAN 1, 2011)	200 +



EXPIRED PUBLIC-INTEREST WAIVER



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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



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- ❖ **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.**

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 PROVISION.HTML](http://www1.eere.energy.gov/recovery/buy_american_provision.html)