

US EPA ARCHIVE DOCUMENT



United States
Environmental Protection
Agency

ARRA BUY AMERICAN COMPLIANCE

WHAT YOU NEED TO KNOW FOR SRF PROJECTS



Buy American Applies To:

Projects:

- ALL projects that receive **ANY** amount of ARRA funding.
- The **ENTIRE** project, not just the portion funded by ARRA.

Products:

- All products made entirely of **iron and/or steel**.
- All **manufactured goods** brought to the construction site for incorporation into the project by contractors, subcontractors, or vendors.
(e.g.: *pumps, motors, generator, valves, lights, aeration blowers, mixers, plywood, bioreactors, CSO bar screen, hydroturbines, sludge press, wind turbine, boiler, HVAC units, PVC pipe and fittings, diffusers, air compressors, stream bank restoration mats*)

Buy American Does Not Apply To:

Projects:

- Projects that **did not receive** any ARRA funding.
- Projects covered by a **national waiver** (very narrow, specific conditions apply).
- A **separate phase** of a project that does not receive ARRA funding and state has decided is distinct in purpose, place, and time from any phase funded by ARRA.

Products:

- Construction **equipment and tools**.
- **Temporary materials** used in construction but not permanently incorporated into the project.
(e.g.: *framing molds, Jersey barriers, excavation sheeting, temporary security equipment, scaffolding and staging, portable sanitary facilities*)
- **Raw materials**, except iron and steel.
(e.g.: *lumber, concrete, gravel, asphalt, cement, fill, crushed stone*)

Compliance Options

Purchase U.S. goods

- Get **certification letter** from manufacturer documenting location of manufacture in U.S. and specific information related to the product.
(e.g.: *model number, serial number, date of manufacture*)
- **Conduct due diligence**, if necessary, to verify manufacturers' and suppliers' claims.
- **Maintain documentation**.

Common Issues

- **Nationality** of manufacturer is irrelevant – the location of manufacture is what is important.
- **Trade agreements** are **NOT** applicable to almost all products and all projects; products manufactured in Canada are still **NOT** considered compliant with Buy American even with the February 2010 Canadian Trade Agreement.
- **Only U.S. EPA** can issue project-specific waivers, which are only applicable to a specific product for a specific project.

Apply *de minimis* waiver

- For **incidental**, low-cost goods incorporated into the project.
- Total cost of all *de minimis* components must be less than **5% of materials cost** for the project, including exempt products.
- You do **NOT** need to apply for a *de minimis* waiver.
- **Maintain documentation** of the total cost of all components under *de minimis* and the total materials cost of the project.
- Incidental items with that can be documented as U.S. manufactured do **NOT** need to be included.

Apply for a project-specific waiver

- Systems can **STILL** apply for a waiver (EPA may even consider the request timely)
- **Document search** for U.S.-made alternatives.
- Provide project **specifications** and other relevant information (project schedule, etc.).
- Submit waiver request electronically to:
region#waiver@epa.gov
- **Maintain documentation** for approved waiver.

SEE REVERSE FOR ADDITIONAL INFORMATION

ARRA BUY AMERICAN COMPLIANCE

WHAT YOU NEED TO KNOW FOR SRF PROJECTS (continued)

Manufactured Goods

- Any good manufactured in the U.S. is compliant with Buy American – the **origin of components and the nationality of manufacturer are irrelevant**.
- Manufacturing is defined as the **substantial transformation** of raw materials and components – it results in a change in character of the components and/or requires significant skill, time, and money.
- The following are **NOT** considered manufacturing:
Painting and other surface treatment (e.g., grinding, electroplating), kit assembly, cutting to length, welding
- In general, processes conducted **at the project site** are considered assembly or construction, not manufacturing.
- If there is a question that a process in the U.S. constitutes manufacturing, **apply U.S. EPA's substantial transformation matrix**. In order to be considered manufacturing, you must be able to answer "yes" to Question 1, "yes" to any part of Question 2, **or** "yes" to at least two parts of Question 3.

Substantial Transformation Questions:

- 1) Are all components domestic?
- 2) Was there a change in character or use?
 - a. Physical and/or chemical properties
 - b. Change from one use to another
 - c. Narrow range of possible uses

- 3) Was the process complex and meaningful?
 - a. Substantial time
 - b. Costly
 - c. High level skill
 - d. Multiple operations
 - e. Added value

- You must **document any "yes" answer** with information and details from the manufacturer.

Roles and Responsibilities

System:

- **Ultimately responsible for the project's compliance**; should document due diligence.
- **Request** project-specific waiver or anticipatory oversight from U.S. EPA.
- Must **maintain adequate documentation** of compliance.
- Responsible for **deciding how and when to apply *de minimis* and substantial transformation decisions**.

Engineers & Contractors:

- Help system ensure compliance; **role should be defined by contracts**.
- Collect adequate documentation and exercise due diligence.

State & U.S. EPA:

- **Oversee** and check project compliance.
- U.S. EPA may provide **anticipatory oversight** at the request of a system.
- **Only U.S. EPA may grant waivers**.

Iron and Steel

- If a product is made of 100% iron or steel, **manufacturing considerations do not apply**.
- Origin of the ore does not matter, but **all refining, processing, stamping, and forming has to happen in the U.S.** (e.g.: rebar, I-beams, man-hole covers, well casing, iron or steel pipe and fittings, angle iron, trusses, truss rods, turnbuckles, steel cable, spikes, unlined tanks)

For Additional Information...

<http://water.epa.gov/aboutow/eparecovery>

Note: This document is for informational purposes only. Any information provided does not supersede any provision of law, regulation, or grant condition.