

US EPA ARCHIVE DOCUMENT

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**.

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.

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 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#wavier@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? | 3) Was the process complex and meaningful? |
| 2) Was there a change in character or use? | a. Substantial time |
| a. Physical and/or chemical properties | b. Costly |
| b. Change from one use to another | c. High level skill |
| c. Narrow range of possible uses | 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.