



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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09/08/2011

# American Recovery & Reinvestment Act

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.



If you have any questions about the Buy American provision, please contact [buyamerican@ee.doe.gov](mailto:buyamerican@ee.doe.gov).

## Guidance Documents

These include guidance and regulations documents that provide information on the Buy American Provision.




**New Guidance:**  
[Buy American Desk Guide](#) 


- [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](#)

### FEATURES



**A Desk Guide to Buy American Provisions of the American Recovery and Reinvestment Act of 2009** 




**Waiver Application: Apply for a nonavailability or unreasonable cost waiver** 



**View All Waivers Issued by EERE**

# American Recovery & Reinvestment Act

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## Waivers Issued by DOE under the Buy American Provisions

This list includes all waivers that have been issued for the 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).

All waivers are "blanket" waivers, and are both retrospective and prospective. They cover all procurement past, present and future.


Grantees who need a product already covered in a waiver must document compliance, consistent with the guidance, but do not need to apply for a new waiver.

When a grantee utilizes an item covered by a waiver in their project, they must inform their Project Officer, who will work with the Contracting Officer to amend the Terms and Conditions of the grant to reflect the waiver. When a sub-recipient utilizes an item covered by a waiver in their project, they must inform the prime grant recipient, such that the prime grant recipient can inform the Project Officer and complete the waiver process above.

Information is available on:

- [Non-Availability Waivers](#)
- [Public Interest Waivers](#)
- [List of EERE Waivers in the Federal Register](#)

### Non-Availability Waivers

Date	Item	Description
January 12, 2011 <a href="#">Non-availability Waiver (4)</a> 	Two-stage, steam heated absorption chillers	Rated at 500-1500 tons.
	Single wall evacuated tube collectors for solar thermal systems	Only when used in an educational context for the purposes of comparing relative efficiency of solar thermal technologies
	3-ton absorption chillers	This is an extremely small unit for educational purposes

# 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= “MANUFACTURED GOOD”

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



## 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



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## 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.



**INTERNATIONAL OBLIGATIONS ONLY APPLY 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.



**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



## 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.

50+ TOTAL ITEMS

# LED TRAFFIC SIGNALS & EXPIRED PUBLIC-INTEREST WAIVER



**AS OF DECEMBER 1ST,  
THE WAIVER FOR LED  
TRAFFIC SIGNALS WAS  
WITHDRAWN**



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

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

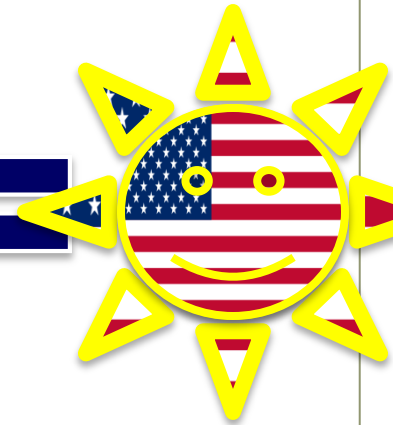
# Solar Waiver- Extended!

Cell



Batteries  
&

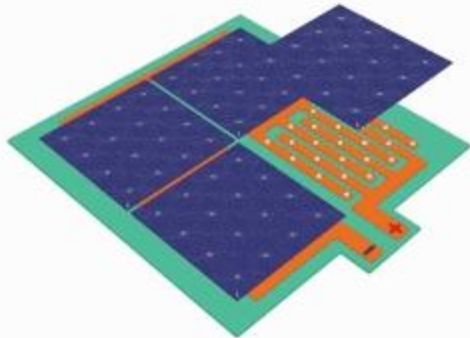
Inverters



or



Module





- ❖ 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.

**5%** of total procurement  
cost

# 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)