

NOTICE

April 15, 2009

As a condition of receiving capitalization grants for the Water Pollution Control and Public Water Supply loan programs under the American Recovery and Reinvestment Act of 2009 (ARRA), the IEPA is required to assure that all loan recipients receiving funding under the ARRA are in compliance with Section 1605 of that Act, with that Section requiring that all iron, steel and manufactured goods used in the project are produced in the United States.

The attached guidance procedures may be utilized by the loan applicant in achieving compliance with the “Buy American” requirement above.

Buy American: Section 1605 of the American Recovery and Reinvestment Act of 2009.

Statutory Requirement.

Section 1605 of the Recovery Act prohibits use of recovery funds 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 in the United States. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for the possibility of a waiver under three circumstances:

- (a) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- (b) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or
- (c) Applying the domestic preference would be inconsistent with the public interest.

§176.70 Policy.

Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

Exceptions.

When one of the following exceptions applies in a case or category of cases, the award official may allow the recipient to use foreign iron, steel and/or manufactured goods in the project without regard to the restrictions of section 1605 of the Recovery Act:

(1) Nonavailability. The head of the federal department or agency may determine that the iron, steel or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 48 CFR 25.104(a) and the procedures at 48 CFR 25.103(b)(1) also apply if any of those articles are manufactured goods needed in the project.

(2) Unreasonable cost. The head of the federal department or agency may determine that the cost of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25 percent.

(3) Inconsistent with public interest. The head of the federal department or agency may determine that application of the restrictions of section 1605 of the Recovery Act would be inconsistent with the public interest.

When a determination is made for any of the reasons stated in this section that certain foreign iron, steel, and/or manufactured goods may be used:

(1) The award official shall list the excepted materials in the award; and

(2) The head of the federal department or agency shall publish a notice in the Federal Register within two weeks after the determination is made, unless the item has already been determined to be domestically nonavailable. A list of items that are not domestically available is at 48 CFR 25.104(a).

Non-application to acquisitions covered under international agreements.

For acquisitions covered by international agreements, Section 1605(d) of the ARRA provides that the Buy American requirement in section 1605 shall be applied in a manner consistent with U.S. obligations under international agreements.

The Buy American requirement shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement, listed in the paragraph directly below, and the recipient is required under an international agreement, described in the Appendix to this document, to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more and projects that are not specifically excluded from the application of those agreements.

The international agreements that obligate recipients covered under an international agreement to treat the goods and services of a Party the same as domestic goods and services and the respective Parties to the agreements are:

- (i) The World Trade Organization Government Procurement Agreement (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);
- (ii) The following Free Trade Agreements:
 - (A) Dominican Republic-Central America-United States Free Trade Agreement (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua);
 - (B) North American Free Trade Agreement (NAFTA) (Canada and Mexico);
 - (C) United States-Australia Free Trade Agreement;
 - (D) United States-Bahrain Free Trade Agreement;
 - (E) United States-Chile Free Trade Agreement;
 - (F) United States-Israel Free Trade Agreement;
 - (G) United States-Morocco Free Trade Agreement;
 - (H) United States-Oman Free Trade Agreement;
 - (I) United States-Peru Trade Promotion Agreement; and
 - (J) United States-Singapore Free Trade Agreement; and
- (iii) United States-European Communities Exchange of Letters (May 15, 1995): Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

§176.130 Noncompliance.

Allegations of violations of section 1605 of the Recovery Act will be reviewed by the Award Official and/or the Office of the Inspector General. If the review reveals that a recipient or sub-recipient has used foreign iron, steel, and/or manufactured goods without authorization, they are authorized to take appropriate action, including one or more of the following:

- (1) Consider requiring the removal and replacement of the unauthorized foreign iron, steel, and/or manufactured goods;
- (2) If removal and replacement of foreign iron, steel, and/or manufactured goods used in a public building or a public work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Federal Government, the award official may determine in writing that the foreign iron, steel, and/or manufactured goods need not be removed and replaced; however a determination to retain foreign iron, steel, and/or manufactured goods does not constitute a determination that an exception to section 1605 of the Recovery Act applies, and

this will be stated in the determination. Further, a determination to retain foreign iron, steel, and/or manufactured goods does not affect the Federal Government's right to reduce the amount of the award by the cost of the steel, iron, or manufactured goods that are used in the project or to take enforcement or termination action in accordance with the agency's regulations.

(4) If the noncompliance is sufficiently serious, appropriate remedies will be considered, including the withholding of cash payments pending correction of the deficiency, suspending or terminating the award, and withholding further awards for the project. Suspension or debarment of the involved local official will be considered in these cases in accordance with the agency's debarment rule implementing 2 CFR, Part 180. If the noncompliance appears to be fraudulent, the matter may be referred to other appropriate officials for criminal investigation.

Definitions.

"Manufactured good" means a good or goods brought to the construction site for incorporation into the building or work that has been:

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

"Designated country" under international trade agreements:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom).

The applicability of international trade agreements in Section 1605(d) requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to “designated country” iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

APPENDIX – U.S. States and Other Entities Subject to U.S. Obligations under International Agreements.

STATE	Entities Covered	Exclusions	Relevant International Agreements
Illinois	Department of Central Management Services	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal	WTO GPA (except Canada) U.S.-Australia FTA U.S.-Chile FTA U.S.-Peru TPA U.S.-Singapore FTA U.S.-EC Exchange of Letters (applies to EC Member States for procurement not covered by WTO GPA and only where the state considers out-of-state suppliers)
OTHER SUB-FEDERAL ENTITIES	Entities Covered	Exclusions	Relevant International Agreements
	Boston, Chicago, Dallas, Detroit, Indianapolis, Nashville, and San Antonio		U.S.-EC Exchange of Letters (only applies to EC Member States and where the city considers out-of-city suppliers)

