

renew Louisiana

LOUISIANA DEPARTMENT OF NATURAL RESOURCES

American Recovery and Reinvestment Act of 2009



BUY AMERICAN PROVISION - FREQUENTLY ASKED QUESTIONS

What is the Buy American provision?

The Buy American Act (Buy American) requires that all iron, steel, and manufactured goods used in any project funded wholly or partially by the American Recovery and Reinvestment Act involving governmental entity, be produced in the United States.

Section 1605 of the American Recovery and Reinvestment Act (Recovery Act) requires that “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)

What are Buy American requirements?

- Requires all iron, steel, and manufactured goods that are incorporated into the public building or public work be produced in the U.S.
- Does not require individual components and raw materials that comprise a manufactured good originate in the U.S. Only the final manufactured product, which will be incorporated into the public building or public work, must be assembled or manufactured into its final form in the United States.
- Does not require machinery and tools used by project laborers be produced in the U.S.
- Requires the subgrantee retain adequate records documenting their compliance with Buy American.

How does the Buy American provision apply to my project?

Projects undertaken and owned by government entities are required to comply with Buy American requirements. There is no requirement with regard to the origin of components or subcomponents of an item, as long as the manufacturing occurs in the United States. Applicable only to iron, steel and manufactured goods that are permanently attached to or fixed to real property.

What is a “manufactured good”?

According to the regulations published by OMB in 2 CFR 176, a manufactured good is a good brought to the construction site for incorporation into the building or work that has been processed into a specific form and shape; or combined with another raw material to create a material that has different properties than the properties of the individual raw materials. 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. The OMB Interim Final Guidance requires that the manufactured good be physically incorporated as into the project.

For example, a crane used to lift items on a construction site would not be considered a manufactured good covered by the Buy American provisions because the crane is not incorporated into the building or public work. Similarly, an energy efficient desktop computer monitor does not become a permanent fixture of the building, and therefore is not “incorporated into” the building. As a result, the monitor does not fit the definition of a “manufactured good” and is not covered by the Buy American provisions.

By contrast, a “smart” thermostat that is brought to the site for incorporation into a building would be covered by the Buy American provisions. The individual parts that go into that meter, however, would be considered components or subcomponents and would not be subject to the Buy American provisions.

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BUY AMERICAN PROVISION - FREQUENTLY ASKED QUESTIONS (continued)

Are there exceptions to the Buy American provision?

Yes, there are three exceptions:

1. Non-availability: item is not produced or manufactured in sufficient and reasonably available quantities of a satisfactory quality
2. Unreasonable cost: inclusion of material will increase cost of the overall project by more than 25%
3. Inconsistency with the public interest

Subgrantees wishing to receive a Buy American waiver for their projects should read the "Instructions for Waiver Requests" document available at: <http://www.management.energy.gov/documents/arraattachment13v1.pdf>

How do I obtain a waiver if my project does not apply?

Subgrantees wishing to receive a Buy American waiver for their projects should read the "Instructions for Waiver Requests" document available at: <http://www.management.energy.gov/documents/arraattachment13v1.pdf>

Have any non-availability waivers been issued for specific items/materials?

Yes. On February 11, 2010 the following items were excluded from Buy American:

- Fluorescent electronic lighting ballasts
- Compact fluorescent light bulbs

On May 24, 2010 the following items were excluded from Buy American:

- Nonresidential programmable thermostats
- Commercial scale fully automatic wood pellet boiler systems
- Facility and small district wood pellet and chip boiler furnaces
- Variable refrigerant flow zoning and inverter driven ductless minisplit HVAC systems
- Electrical "smart" strips/surge protectors
- Gas or propane tankless water heaters up to 200,000 BTUs
- Fully enclosed continuous composting systems

On August 11, 2010 the following items were excluded from Buy American:

- 24-leaf, motorized DMX iris units
- Induction lamps and ballasts
- Enphase Micro-inverters for solar photovoltaic systems
- Commercial-scale high efficiency condensing boilers with indirect heating systems
- Large-format solar thermal collectors for integrated district heating systems
- Turbocharger for Mitsubishi/Man 52/55B diesel generator engine

On September 30, 2010 the following items were excluded from Buy American:

- Motorized automatic two (2) wing revolving doors
- Self-contained photovoltaic LED area lighting system
- Parking Guidance System Controllers
- Load Management Ripple Control Receiver for an existing load management system
- LED tube lights to replace T8/ other 4 foot fluorescents

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BUY AMERICAN PROVISION - FREQUENTLY ASKED QUESTIONS (continued)

Have any non-availability waivers been issued for specific items/materials? (continued)

On November 4, 2010 the following items were excluded from Buy American:

- Surface mounting time switch
- HVAC units with 8.375' W x 9.5' H x 2.72' D – Only when the application requires an HVAC unit with a height of 10' or less due to documented space constraints
- Low temperature thermostat
- Programmable DDC controllers for LON protocol
- Hardware necessary for implementation of Honeywell Enterprise Buildings Integrator (EBI) software for integration of water management and HVAC systems

*The Department of Energy reserves the right to revisit these exclusions at any time. Revisiting an exclusion may result in a reversal on the decision and the product now being included in Buy American. Please contact the Department of Natural Resources to validate exclusion prior to purchasing an item listed above.

What documents do I need to certify compliance with Buy American?

There is no specific requirement. Documentation could include, but is not limited to: (1) language in contractual documents that obligates contractors/subcontractors to comply with the Buy American provisions; (2) receipts for the domestically-produced items; (3) a documented certification from the contractor, vendor, distributor, supplier, or manufacturer verifying that the product was manufactured in a U.S. plant; (4) detailed information supporting the claim that the manufactured good has undergone substantial transformation in the U.S.; and/or (5) other common-sense documentation per the discretion of the Recipient.

We intend to use EECBG funds to purchase a new appliance. Does Buy America apply to this appliance purchase?

The answer is "it depends". In an analysis done by the Department of Energy relating to whether Buy American requirements apply to computer hardware, it was determined that since the hardware is not incorporated into the building as a permanent fixture, it is not covered by the Buy American provisions. This guidance (http://www1.eere.energy.gov/recovery/pdfs/computer_hardware_and_software_faq.pdf), while specifically for computer hardware and software, explains the analysis to determine if an item is "incorporated into" a building.

Briefly, if the appliance in question is permanently attached to or fixed to real property, then Buy American would apply. If the appliance is not permanent and can be easily unplugged and relocated, then Buy American does not apply.

Additional Resources on Buy American:

U.S. DOE Buy American Provision- http://www1.eere.energy.gov/recovery/buy_american_provision.html