

Step-By-Step Waiver Process

Application by Assistance Recipient

Each local entity that receives ARRA water infrastructure financial assistance is required by section 1605 of the ARRA to use American made iron, steel, and manufactured goods in the construction of its project. However, if it is one of the entities listed in the appendix to Appendix 9 of the OMB Updated Implementing Guidance, it must allow for the use of iron, steel, or manufactured goods from a country covered by a relevant international agreement. If that is not possible, or if the recipient falls under one of the categories below, the recipient may request a waiver. Until a waiver is granted by EPA, the Buy American requirements stand, except as noted above with respect to countries covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the requirements of the ARRA, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron, steel, and manufactured goods. It is essential that the assistance recipient include the ARRA's Buy American terms in any request for proposals or solicitations for bids, and in

all contracts (see Appendix 3 for sample contract language). The assistance recipient may seek a waiver at any point before, during, or after the bid process if one or a combination of three conditions is met:

1. Iron, steel, and manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
2. Inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Applying the Buy American requirements of ARRA would be inconsistent with the public interest.

EPA believes that most waivers will likely come forward at two points in a project: first, based on the design where the assistance recipient identifies key materials (iron and steel) or equipment (manufactured goods) that are not produced in sufficient quantities domestically, or, second, after evaluation by prospective bidders and their consultation with suppliers determines that iron, steel, or manufactured goods as required by the design are not produced in sufficient quantities domestically. An assistance recipient could potentially request waivers at either or both points in the project. It is also possible to request a waiver after bids are opened or after construction has initiated. EPA strongly recommends, if a waiver is necessary, initiating the request before construction has initiated.

Consistent with the direction of the OMB Guidance at §176.120, EPA will expect that requests submitted after the signing of the construction contract will include an explanation of why the request was submitted at that late date. Late submissions that are based on the grounds of lack of reasonably foreseeable circumstances that led to the request, where sufficiently documented, will be considered as if timely submitted.

Late requests that are based on grounds that the assistance recipient would be reasonably expected to foresee will, before consideration of the underlying waiver request, be subject to a balancing. This balancing will consider whether the public interest in expeditious construction under ARRA does or does not outweigh the need for full, timely, and good faith compliance with the Buy American provision according to the grounds set forth in ARRA and in applicable federal guidance and information.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron, steel, and manufactured goods needed to complete the project as described in the plans and specifications that may not be available from domestic sources and the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the Regional waiver email address listed in the chart below. Please include all of the information as shown in the checklist in Appendix 1. The Regional office will send a copy to the State contact.

Chart 1

If the assistance recipient is located in...	Send the waiver request to...
Region 1: ME, NH, VT, MA, RI, CT	region1waiver@epa.gov
Region 2: NY, NJ, PR, VI	region2waiver@epa.gov
Region 3: PA, MD, DE, VA, WV, DC	region3waiver@epa.gov
Region 4: NC, SC, KY, TN, AL, MS, GA, FL	region4waiver@epa.gov
Region 5: OH, IN, MI, MN, WI, IL	region5waiver@epa.gov
Region 6: TX, OK, AR, LA, NM	region6waiver@epa.gov
Region 7: IA, KS, NE, MO	region7waiver@epa.gov
Region 8: CO, WY, UT, SD, ND, MT	region8waiver@epa.gov
Region 9: CA, NV, AZ, HI, GU, AS, NMT	region9waiver@epa.gov
Region 10: WA, OR, ID, AK	region10waiver@epa.gov