

**EDMUND A. GRAY COMPANY, Inc**  
**2277 East Fifteenth Street**  
**Los Angeles, CA 90021-2841**  
**(213)625-2723 / FAX: (213)625-5734**



**MANUFACTURED  
IN THE USA  
STATEMENT  
& CLARIFICATION**

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STEEL, BRASS, PLASTIC, STAINLESS AND ALUMINUM PIPE NIPPLES  
MALLEABLE IRON, BRONZE, MERCHANT STEEL & ALUMINUM PIPE FITTINGS

The Edmund A. Gray Company has been manufacturing pipe nipples for over 110 years at our factory in Los Angeles, CA. We source our raw materials both domestically (USA made) and globally (other USMCA countries and overseas). Since we are an American manufacturer of pipe nipples, we can provide our customers with product that meets the various Buy America, Buy American, BABA, and ARRA requirements (to name a few).

If a specific project, bid, or quote requires compliance with requirements set forth in any of the aforementioned programs, please let us know so we can make sure we use the appropriate raw materials to ensure adherence to the specifications required.

For reference, we have attached a grid that outlines some of the key points in some of the various "American Made" programs, to help clarify requirements.

With regard specifically to ARRA, Section 1605 of The American Recovery and Reinvestment Act (ARRA) sets forth the clear expectation that "all the iron, steel, and manufactured goods" used in an ARRA-funded project will be "produced in the United States."

These requirements have been interpreted by the Office of Management & Budget (OMB) and the Environmental Protection Agency (EPA). Those interpretations and rulings can be found on their respective web sites. Based on that information and documentation, when notified by our customers that ARRA funds are being used for a project, we can and will use domestically manufactured pipe so that those products will be compliant with the provisions set forth in Section 1605 of the ARRA. The same can be applied to projects requiring BABA compliance.

In situations where an 'American Made' product is required, the federal government has set forth guidelines (eg, the 51% rule) for determinations, and additionally the EPA has provided clarification through their "Substantial Transformation Test" guidelines, which is a series of questions that must be answered in order to determine whether or not a product can be claimed as being domestically produced (even to include ARRA substantiations).

The Edmund A. Gray Company affirms that, with the required (positive) responses to the questions listed in the EPA's "Substantial Transformation Test", that our products are domestically manufactured, even with regard to the use of raw materials which may have originated outside of the United States. And therefore can meet the requirements for most "Buy America" or "Buy American" provisions (but not necessarily ARRA, unless specifically requested) for projects requiring American Made product.

*Please refer to the following pages which include a side-by-side comparison of the various "American Made" programs as well as the EPA Substantial Transformation Test, with Edmund A. Gray Company responses included.*

<b>American Recovery and Reinvestment Act of 2009, Section 1605 – Buy American (100% Domestic Content of items below)</b>	<b>Federal Aviation Administration (FAA) 49 U.S.C. § 50101 – Buy American (see discretionary waiver when 60% Domestic Content of items below)</b>	<b>Federal Highway Administration (FHWA) 23 U.S.C. § 313 – Buy America; 23 C.F.R. § 635.410 (100% Domestic Content of items below)</b>	<b>Federal Railroad Administration (FRA) High Speed Rail Program 49 U.S.C. Chapters 244, 246; § 24405 – Buy America (100% Domestic Content of items below)</b>	<b>National Railroad Passenger Corporation (AMTRAK) 49 U.S.C. § 24305</b>	<b>Federal Transit Administration (FTA) 49 U.S.C. § 5323(j); 49 C.F.R. Part 661 (Buy America Requirements); (See 60% Domestic Content for buses and other Rolling Stock)</b>
<p><u>Buy American</u></p> <p>The Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a <u>public building</u> or <u>public work</u> unless all of the <u>iron</u>, <u>steel</u>, and <u>manufactured goods</u> used in the project are produced in the United States.</p> <p><u>Waivers</u></p> <p>The head of the Federal department or agency finds that:</p> <p>(1) It would be inconsistent with the public interest;</p> <p>(2) Iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or</p> <p>(3) 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.</p> <p><u>Other</u></p> <p><i>There are provisions in the Recovery Act for the Federal Aviation Administration, Federal Transit Administration, Federal Railroad Administration, and Federal Highway Administration to apply their own grant requirements, including Buy America(n).</i></p> <p><u>All waivers have to be posted</u> in Federal Register.</p> <p>U.S. international obligations (World Trade Organization Government Procurement Agreement, U.S. Free Trade Agreements, U.S.-EC Exchange of Letters [May 15, 1995], and Canada-U.S. Agreement on Government Procurement) apply.</p>	<p><u>Buy American</u></p> <p>The FAA will not obligate any funds authorized to be appropriated for any project unless <u>steel and manufactured products</u> used in such projects are produced in the United States.</p> <p><u>Waivers</u></p> <p>The Administrator has delegated authority to grant waivers to this requirement to Director of Acquisition and Contracting; Regional Administrators; and Center Directors upon finding that compliance with the Act would:</p> <p>(1) It would be inconsistent with the public interest;</p> <p>(2) The steel and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;</p> <p>(3) When procuring a facility or equipment under the Airport and Airway Improvement Act of 1982:</p> <p>(A) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and</p> <p>(B) final assembly of the facility or equipment has occurred in the United States; or</p> <p>(4) Including domestic material will increase the cost of the overall project by more than 25 percent.</p> <p><u>Other</u></p> <p>Labor costs involved in final assembly are not included in calculating the cost of components.</p> <p>U.S. international obligations (World Trade Organization Government Procurement Agreement, U.S. Free Trade Agreements, U.S.-EC Exchange of Letters [May 15, 1995], and Canada-U.S. Agreement on Government Procurement) do not apply.</p>	<p><u>Buy America</u></p> <p>The Secretary of Transportation shall not obligate any funds unless <u>steel, iron, and manufactured products</u> used in such project are produced in the United States.</p> <p>Applies to iron and steel products and their coatings that are to be permanently incorporated into the project. The FHWA, in its 1983 rulemaking, determined that Buy America did not apply to raw materials and waived its application to manufactured products, although in the statute, based on the public interest. Lack of adequate domestic supply resulted in a 1995 nationwide waiver for iron ore, pig iron, and reduced/processed/pelletized iron ore. In 1994, a nationwide waiver for specific ferryboat parts came into effect.</p> <p><u>Waivers</u></p> <p>The Secretary of Transportation may waive the requirement if the Secretary finds that:</p> <p>(1) It would be inconsistent with the public interest;</p> <p>(2) Such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or</p> <p>(3) Inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent (this is a standing waiver codified in regulations when alternate bidding procedures are used).</p> <p><u>Other</u></p> <p>Labor costs involved in final assembly are not included in calculating the cost of components.</p> <p><u>All waivers have to be posted</u> in Federal Register. All proposed waivers are first posted on the FHWA's website for a 15-day comment period prior to publishing the final decision in the Federal Register.</p> <p>U.S. international obligations (World Trade Organization Government Procurement Agreement, U.S. Free Trade Agreements, U.S.-EC Exchange of Letters [May 15, 1995], and Canada-U.S. Agreement on Government Procurement) do not apply.</p>	<p><u>Buy America</u></p> <p>The Secretary of Transportation may obligate funds for a project only if the <u>steel, iron, and manufactured goods</u> used in the project are produced in the United States.</p> <p><u>Waivers</u></p> <p>The Secretary of Transportation may waive the requirement if the Secretary finds that:</p> <p>(1) It would be inconsistent with the public interest;</p> <p>(2) The steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;</p> <p>(3) Rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or</p> <p>(4) Including domestic material will increase the cost of the overall project by more than 25 percent.</p> <p><u>Other</u></p> <p>The requirements only apply to projects for which the costs exceed \$100,000.</p> <p>Labor costs involved in final assembly are not included in calculating the cost of components.</p> <p><u>All waivers have to be posted</u> in Federal Register.</p> <p>U.S. international obligations (World Trade Organization Government Procurement Agreement, U.S. Free Trade Agreements, U.S.-EC Exchange of Letters [May 15, 1995], and Canada-U.S. Agreement on Government Procurement) do not apply.</p>	<p><u>Domestic Buying Preferences</u></p> <p>Amtrak shall buy only:</p> <p>(A) unmanufactured articles, material, and supplies mined or produced in the United States; or</p> <p>(B) manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, and supplies mined, produced, or manufactured in the United States.</p> <p><u>Waivers</u></p> <p>The Secretary may exempt Amtrak from this subsection if the Secretary decides that:</p> <p>(A) for particular articles, material, or supplies--</p> <p>(i) the requirements are inconsistent with the public interest;</p> <p>(ii) the cost of imposing those requirements is unreasonable; or</p> <p>(iii) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; or</p> <p>(B) rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time.</p> <p><u>Other</u></p> <p>The requirements apply only when the cost of those articles, material, or supplies bought is at least \$1 million.</p>	<p><u>Buy America</u></p> <p>No funds may be obligated by FTA for a grantee project unless all <u>iron, steel, and manufactured products</u> used in the project are produced in the United States.</p> <p><u>Waivers</u></p> <p>The Administrator may waive the general requirements if the Administrator finds that:</p> <p>(1) It would be inconsistent with the public interest;</p> <p>(2) The materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;</p> <p>(3) The inclusion of a domestic item or domestic material will increase the cost of the contract between the grantee and its supplier of that item or material by more than 25 percent.</p> <p><u>Rolling stock procurements</u></p> <p>(a) The Buy America provisions do not apply to the procurement of buses and other rolling stock (including train control, communication, and traction power equipment), if the cost of components produced in the United States is more than 60 percent of the cost of all components and final assembly takes place in the United States.</p> <p><u>Other</u></p> <p>Labor costs involved in final assembly are not included in calculating the cost of components.</p> <p><u>Post only "public interest" waivers</u> in Federal Register.</p> <p>U.S. international obligations (World Trade Organization Government Procurement Agreement, U.S. Free Trade Agreements, U.S.-EC Exchange of Letters [May 15, 1995], and Canada-U.S. Agreement on Government Procurement) do not apply.</p>

**Buy American Provisions of ARRA Section 1605**

**QUESTIONS AND ANSWERS – Part 1**  
July 2, 2009

ARRA Section 1605 sets forth the clear expectation that “all the iron, steel, and manufactured goods used in [an ARRA-funded] project will be “produced in the United States.” Section 1605 also sets forth specific circumstances under which a federal agency may determine to waive this Buy American requirement. However, it is important to emphasize that, as they are identified in OMB’s April 23 Guidance, waivers are “exceptions” to the Buy American expectations of Section 1605.

**A. MANUFACTURED GOODS / SUBSTANTIAL TRANSFORMATION**

**1. How do we determine if a good is manufactured in the United States?**

The following questions are intended to serve as a guide for SRF assistance recipients to use to determine whether a manufactured good to be incorporated into a project being built with ARRA funds was manufactured in America. ARRA places on assistance recipients the obligation to establish whether a manufactured good was produced in the U.S. Substantial transformation has occurred in the U.S. if the answer is yes to either of the following questions - Questions 1, 2, or 3. If the answer to Question 1 is yes, then this is clearly manufactured in the U.S., and the inquiry is complete. If the answer is yes for any of 2a, 2b, or 2c, then answer to Question 2 is yes. If the answer is yes for at least two of 3a, 3b, 3c, 3d, or 3e, then answer to Question 3 is yes. However, if a recipient cannot answer any of the following in the affirmative, the recipient should either find an alternative U.S.-made good if possible, or seek a waiver from the Buy American provisions, if applicable.

<b>Questions for Determining Whether Substantial Transformation Has Occurred in the U.S.</b>		
<b>QUESTION</b>	<b>YES</b>	<b>NO</b>
<b>1. Were all of the components of the manufactured good manufactured in the United States, and were all of the components assembled into the final product in the U.S.? (If the answer is yes, then this is clearly manufactured in the U.S., and the inquiry is complete)</b>	<b>X **</b>	<b>X</b>
<b>** WHEN REQUESTED AND/OR NOTIFIED BY CUSTOMER THAT PRODUCT IS BEING USED FOR ARRA PROJECT **</b>		
<b>2. Was there a change in character or use of the good or the components in America? (These questions are asked about the finished good as a whole, not about each individual component)</b>	<b>X</b>	
a. Was there a change in the <u>physical</u> and/or chemical properties or characteristics designed to alter the functionality of the good?	<b>X</b>	
b. Did the manufacturing or processing operation result in a change of a product(s) with one use into a product with a different use?	<b>X</b>	
c. Did the manufacturing or processing operation result in the narrowing of the range of possible uses of a multi-use product?	<b>X</b>	
<b>2. Was there a change in character or use of the good or the components in America? (These questions are asked about the finished good as a whole, not about each individual component)</b>	<b>X</b>	

<b>Questions for Determining Whether Substantial Transformation Has Occurred in the U.S. - continued</b>		
<b>QUESTION</b>	<b>YES</b>	<b>NO</b>
<b>3. Was/(were) the process(es) performed in the U.S. (including but not limited to assembly) complex and meaningful?</b>	<b>X</b>	
a. Did the process(es) take a substantial amount of time?	<b>X</b>	
b. Was/(were) the process(es) costly?	<b>X</b>	
c. Did the process(es) require particular high level skills?	<b>X</b>	
d. Did the process(es) require a number of different operations?	<b>X</b>	
e. Was substantial value added in the process(es)?	<b>X</b>	

**2. Where did these questions to determine whether substantial transformation occurred in the U.S. originate from?**

2 CFR §176.140 defines “manufactured good” as “a good brought to the construction site for incorporation into the building or work that has been (i) processed into a specific form and shape; or (ii) combined with other raw material to create a material that has different properties than the properties of the individual raw materials.” In order to further refine our understanding of the term, we look to 2 CFR §176.160. This particular section is not binding on the great majority of recipients in the SRF programs, only those that are subject to particular international agreements identified in the Appendix to Subpart B in 2 CFR Part 176 of the OMB Guidance (74 FR at 18457, April 23, 2009). However, the section provides important guidance, rooted in established lines of judicial and administrative interpretation, by defining a domestic manufactured good as “a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.”

This definition incorporates the “substantial transformation test” which has been long applied in judicial and administrative customs cases on labeling, national origin, and other Federal statutory requirements as the appropriate and effective test to identify where a good was “manufactured”. While a variety of statutory and judicial criteria have been formulated to determine, always on a case-by-case basis, whether or not “substantial transformation” has occurred, the previous questions represent a distillation of the functional analyses common to the different versions of the “substantial transformation test.” If a recipient cannot answer yes to Question 1, 2, or 3, the recipient should either find an alternative U.S.-made good if possible, or seek a waiver from the Buy American provisions, if applicable.

In applying the “substantial transformation” test within the ARRA Buy American provision (Section 1605), the objective is to determine whether or not a product is U.S.-produced when the product is created by processes in more than one country and/or incorporates materials, parts, or components from more than one country. More particularly, the test is intended to identify that whether manufacturing or processing operations that took place in the U.S. amounted to “substantial transformation” which would enable the product to be properly considered as U.S.-manufactured.

In all cases, it is a question of degree; the transformation or change to imported materials brought about by manufacturing or other processing must be "substantial."

- 3. Can you provide some examples of things that would not be able to answer yes to the questions to determine if substantial transformation has occurred in the U.S.?**  
One example would be cosmetic or surface changes, such as painting, cleaning, or lacquering, which do not significantly affect the physical dimensions or qualities or chemical composition of the product, are usually not considered sufficient to constitute a substantial transformation.

In addition, simply cutting a material to length or width is generally not considered a sufficient change in use. A material that is simply cut to length or width remains suitable for multiple uses. For example, cutting a steel pipe to a particular length would not be considered a substantial transformation; however, bending a steel pipe to a particular shape would be considered a substantial transformation.

- 4. What about a kit, would that be considered a U.S.-made good if it is assembled in the US?**  
If all the pieces are shipped by one company with the intent of providing all components necessary to be assembled into a functional good (e.g., pump station), then this would not be considered substantial transformation and therefore not a U.S.-made good.
- 5. Is concrete considered a manufactured good?**  
No, concrete is not considered a manufactured good because all of the raw materials are brought to the construction site, where they are then mixed to create concrete. Therefore, concrete mixing is considered construction. The result is the same if the raw materials are continually mixed en route to and/or at the site.
- 6. Is it the primary responsibility of the general contractor to document that purchases are U.S.-made goods?**  
The general contractor should keep all documentation of purchases to determine if they are U.S.-made goods. Additionally, the contractor may be required (as in the sample certification attached to the April 28, 2009 memo) by the assistance recipient to provide verification of the U.S. manufacture of any goods. However, it is the responsibility of the assistance recipient to retain adequate documentation in their project files to demonstrate Buy American compliance.

## **B. CATEGORICAL (including nationwide) WAIVERS**

- 1. What is EPA's interpretation of "categorical" waiver?**  
ARRA Section 1605(b) authorizes the Administrator to provide waivers in any "case or category of cases" that meet the terms specified in that provision. In turn, the Administrator has delegated to the Assistant Administrator for Water the authority to consider and make determinations on categorical waivers regarding the SRF programs that have "applicability to two or more grant recipients or broad applicability for a national program." Thus, for example, the nationwide waiver published in the Federal Register for refinanced projects for which the initial debt obligation was incurred

beginning October 1, 2008 and before February 17, 2009 was for all projects that fell into the defined "category of cases."

- 2. What must an assistance recipient do to determine if their ARRA-funded project is covered by a categorical (including nationwide) waiver?**  
Assistance recipients who believe their ARRA-funded SRF project is covered by an existing categorical (including nationwide) waiver (which covers a "category of cases", per ARRA Section 1605(b)) do not need to apply for an individual waiver. Such recipients need to look closely at the text of the particular waiver as published to identify the specific information they need to have and maintain in their project files in order to document the coverage of a project by a categorical waiver. More broadly stated, **the documentation that a project is covered by a categorical waiver must include all elements required by the waiver for a project to be covered.** They are not required to engage with or submit anything to the State or EPA to have their project covered by the waiver, but if they have any question about whether their project meets the conditions for coverage under a categorical waiver, they may wish to consult with their State and/or EPA Regional Office (which are responsible for ensuring compliance with the Buy American provision).

### **2.a. Refinancing Waiver**

For example, in the case of the nationwide refinancing waiver published April 7, 2009, an assistance recipient must have and maintain documentation that their project later funded by ARRA had its initial "debt obligation incurred" (the ARRA and waiver terminology) within the Oct. 1, 2008-Feb. 17, 2009 window. This is fairly straightforward and objective information, though it's possible that in a few situations there could be question whether the financing action taken within the window amounts to a "debt obligation incurred" (e.g., self-financing does not).

### **2.b. Bidded Projects Waiver**

With regard to the bidded projects waiver, two conditions must be met for an ARRA-funded project to be covered. First, the project must have made a public bid solicitation within the Oct. 1, 2008-Feb. 17, 2009 window, and maintain documentation of this (a copy of a published advertisement, an internet posting or email distribution, etc.) in the project files. In addition, the waiver text requires that:

"potential assistance recipients must show a verifiable basis on which they believed it was reasonable and prudent to solicit bids for these projects prior to concluding an assistance agreement with the State SRF. Such verification will show some objective basis under which these actions were reasonably and prudently undertaken in specific anticipation of ARRA funding, or any other source of timely funding. Such action may include an affirmative communication from a funding source, such as a binding commitment, high placement on a priority list, or other indicative and verifiable communication from an SRF or other government funding source, or regarding any affirmative steps taken to secure private bond financing from an appropriate industry entity. Any such objective verification would show that bid solicitations were undertaken reasonably and prudently".

The text makes clear the kinds of information required. If the recipient has documentation of a type specifically described above (note that the "other government

funding source" may include budgetary allocations or commitments by the entity itself to provide self-financing), they must retain it in the project files as documentation to the State and EPA of compliance with the Buy American provision in ARRA section 1605. If the recipient is uncertain what documentation is appropriate or sufficient, it may wish to consult with their State or EPA Regional Office, including (if appropriate and mutually agreeable) some written confirmation or statement as to the sufficiency of documentation.

**3. Are items covered by the De Minimis waiver even if the origin is known?**

No. In the de minimis waiver, EPA "found that it would be inconsistent with the public interest ... to require that the national origins of these components be identified." Under ARRA Section 1605(b) and (c), a finding is required to define the basis and therefore the scope of all waivers. In further elaboration, the waiver text states among the characteristics needed to identify incidental components that are covered, that the "[c]ountry of manufacture and the availability of alternatives are not readily or reasonably identifiable prior to procurement," in addition to the "[u]se of literally thousands of miscellaneous ... components" (i.e., different items of miscellaneous character), and the "[g]enerally low cost" of the incidental components.

**C. INDIVIDUAL (project-specific) WAIVERS**

**1. Will information be made public as to which companies have received waivers?**

Because the Buy American requirement of section 1605(a) applies to "projects," the responsibility to comply rests with assistance recipients. Only they directly need and can apply for individual project waivers, although requests can be submitted on recipients' behalf by States and authorized agents of recipients. All waivers will be published in the Federal Register. However, because any waivers provide only for the use of non-U.S. produced iron, steel, or manufactured goods in a specific case (project) or category of cases, such waivers will not designate or be for the use of iron, steel, or manufactured goods from specific companies or brands. A waiver may name specific companies or brands, but only as part of the detailed justification required for waivers. However, an individual waiver is based in and justified by the particular circumstances specified in the published waiver. Thus, a non-US-made product whose use is permitted under an individual waiver might not be permitted in other cases where different circumstances do not justify a waiver.

**2. Will waiver documentation for successful waivers be posted on the web so that others with the similar circumstances can use the format and justification if they apply?**

We will be linking all Federal Register waiver notices to our page on the EPA recovery website (<http://www.epa.gov/water/eparecovery/>). The "detailed written justification" for the waiver that is required to be included in the Federal Register notice will be part of each notice. However, generally it will not include the specific documents that were submitted with the waiver request. It will include sufficient identification of the relevant facts set forth in those documents that provided adequate justification to issue a waiver.

**3. Is the 25% increase in cost an increase in the project cost, or the product cost as is used in the old Buy American language?**

In order to apply for a project specific waiver based on cost, the increase in cost must be 25% of the overall (total) project cost, as stated in the statute. Section 1605 was written to

apply to a wide variety of programs across the federal government, and is not linked to the standards and criteria that may apply in previously-enacted Buy American statutes. Where the OMB ARRA Guidance (published in the Federal Register April 23, 2009, and can be found at 74 FR 18452) includes additional applicable definitions or terms (such as "substantial transformation"), these are incorporated into EPA's implementation of Section 1605.

**4. Does the 25% increase in cost include associated costs, such as engineering fees, or is it just the contract cost?**

The 25% increase in total project cost is for the entire project and would include associated engineering fees.

**5. What is the total amount of time from when a waiver is requested to the time a decision is received?**

The target is two weeks, starting once a waiver request application is deemed complete.

**D. NON-AVAILABILITY WAIVERS**

This information provides additional clarification of the documentation necessary to support a waiver request from an assistance recipient based on ARRA Section 1605(b)(2), that "iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality". This is defined in Memorandum ARRA 09-1, dated 04/28/2009, as: "The quantity of iron, steel, or the relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design."

**1. What if a good covered by section 1605 is produced by both U.S. and non-U.S. manufacturers, but the assistance recipient has reason for concern that the U.S.-produced good may not be available in a sufficient quantity and in a timely manner as to meet the "expeditious construction" and other timing requirements of ARRA?**

One potential element of the justification for a project based waiver is if the award recipient provides adequate documentation of its good-faith efforts to seek and its inability to obtain a firm and satisfactory commitment by any U.S. producer to deliver a sufficient quantity of the good in a timely manner as specified in the construction documents for the project. Justification for such a waiver would also require a firm and satisfactory commitment by a non-U.S. producer.

**2. Are there steps that an assistance recipient can take to protect itself against the risk that any commitment it can obtain will not be met or will not be firm and satisfactory?**

One possible means by which an assistance recipient may be able to maximize the likelihood of receiving a firm and satisfactory commitment from a producer is by including significant financial incentives in their construction contracts with clear, timely, and enforceable consequences for failure to deliver the promised item(s), in the promised quantity, at the promised time, and to the promised location.