



United States Department of Agriculture
Rural Development

RD AN No. 4712(1924-A, 1942-A,
1942-C, 1942-G, 1780)

March 15, 2013

TO: State Directors, Rural Development

ATTN: Community Programs Directors, Business Programs Directors, Housing Programs Directors, State Engineers, and State Architects

FROM: Dallas Tonsager
Under Secretary
Rural Development

SUBJECT: Application of Buy American Requirements to Projects Funded with American Recovery and Reinvestment Act Funds

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance to Rural Development State Office staff regarding the Buy American requirements contained in Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA) and 2 CFR 176 and the applicability of these requirements to Rural Development (RD) projects.

The intended outcome is to instruct and inform RD State Office staff on how to implement these requirements to ensure compliance with Section 1605 of the ARRA.

This AN does not apply to guaranteed loans.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4622 (1924-A, 1942-A, 1942-C, 1942-G, 1780) dated February 17, 2012, which will expire on February 28, 2013.

BACKGROUND:

Section 1605 of the ARRA requires that projects funded in whole or part under ARRA, for the construction, alteration, maintenance, or repair of a public building or public work use iron, steel, and manufactured goods produced in the United States unless a specified exception applies. Recipients of Federal assistance under ARRA must ensure that design professionals, contractors, subcontractors, and suppliers comply with these requirements.

EXPIRATION DATE:

March 31, 2014

FILING INSTRUCTIONS:

Preceding RD Instructions 1924-A,
1942-A, 1942-C, 1942-G, 1780

IMPLEMENTATION RESPONSIBILITIES:

If ARRA funds are included, in whole or in part, in a project involving a public building or public work, then all construction, alteration, maintenance, and repair are subject to the requirements of Section 1605. Section 1605 does not apply if the funds are used for the construction, alteration, maintenance, or repair of a privately-owned building or work. Because of the exemption for privately-owned facilities, Single Family Housing programs, some Business programs, and not-for-profit recipients of Community Facility and Water and Waste Disposal programs are not subject to this requirement. Tribal recipients of ARRA funds are not subject to Section 1605 Buy American requirements.

Award officials shall ensure that recipients of ARRA funds comply with all requirements of this AN, but in doing so have two primary responsibilities: processing waiver requests and investigating allegations of noncompliance.

RD staff should not provide recipients and consulting architects and engineers with preliminary decisions regarding whether specific iron, steel, and manufactured goods are considered produced in the U.S. However, they may provide general guidance to assist recipients and consulting architects and engineers in making the appropriate evaluations and preparing justifications. If a recipient requests an exception, USDA is responsible for making determinations in accordance with 2 CFR 176.80 (see Exhibit 2).

Recipients that do not comply with these requirements shall be subject to enforcement actions (2 CFR 176.130.)

Definitions (2 CFR 176.30 and 176.70 (referencing 2 CFR 176.140 and 176.160)):

“Award official” means a person with the authority to enter into, administer, and/or terminate financial assistance awards and make related determinations and findings. The award official is typically a State Office official and may be the Program Director, but in some cases the award official is at the National Office.

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

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

“Produced in the United States”:

Iron and steel are considered produced in the United States if all manufacturing processes, except metallurgical processes involving refinement of steel additives, take place in the United States.

Manufactured goods are produced in the United States if manufacturing (the finished manufactured goods, not necessarily the component parts) takes place in the United States. Manufacturing includes processing the item into a specific shape or form or combining it with other raw materials to create a material that has different properties than the properties of the individual raw materials. There are no requirements for domestic components or subcomponents, including iron and steel components and subcomponents. Manufactured goods may also be considered produced in the U.S. if they are substantially transformed in the U.S.

“Public building” or “public work” means a public building of, or public work of, a governmental entity, including regional and local governmental entities. This definition does not include privately owned buildings.

“Recipient” means any entity other than an individual that receives any ARRA funds in the form of a grant, cooperative agreement, or loan directly from the Federal Government.

Policy (2 CFR 176.70):

None of the funds appropriated or otherwise made available by the ARRA may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless the following requirements are met:

1. The public building or public work is located in the United States.
2. All the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.
 - a. Production in the United States of the iron or steel 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.
 - b. 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.

International Agreements: Section 1605(d) of the ARRA provides that the Buy American requirements shall be applied in a manner consistent with U.S. obligations under international agreements. The provision of the *Agreement between the Government of Canada and the Government of the United States of America on Government Procurement*, that modified the effect of ARRA Section 1605 implementation on certain projects to allow Canadian iron, steel, and manufactured goods to be treated as if they were produced in the United States expired on September 30, 2011.

This means that for ARRA-funded construction contracts awarded after September 30, 2011, Canadian iron, steel, and manufactured goods must be treated as foreign-produced, regardless of the impact on project cost. It should be noted that for contracts awarded by ARRA recipients on or before September 30, 2011, contractors may continue to treat Canadian iron, steel, and manufactured goods as if they were produced in the U.S.

Substantial Transformation: Manufactured goods that consist in whole or in part of materials from a foreign country, which have been substantially transformed in the United States into new and different manufactured goods distinct from the materials from which they were transformed may be considered produced in the U.S. per 2 CFR 176.160 (a).

ARRA recipients may determine a manufactured good to be produced in the U.S. if the recipient determines the good meets one of the following three tests: (1) All of the components of the good were manufactured in the U.S. and assembled into the final product in the U.S., or (2) there was a change in the character or use of the good or the components in the U.S., or (3) a process (such as assembly) was performed on the good that was both complex and meaningful. If the answer to test one is yes, the good is clearly produced in the U.S.

To meet test two, any of the following questions must be answered in the positive with regard to the finished good as a whole rather than the components:

1. Was there a change in the physical and/or chemical properties or characteristics designed to alter the functionality of the good?
2. Did the manufacturing or processing operation result in narrowing of the range of possible uses of a multi-use product?
3. Was there a change in character or use of the good or the components in the U.S.?

If two of the following five questions can be answered positively for the finished good as a whole, then question three is answered yes and the item may be considered substantially transformed in the U.S.

1. Did the process(es) take a substantial amount of time?
2. Was (were) the process(es) costly?
3. Did the process(es) require a particular high level of skill?
4. Did the process(es) require a number of different operations?
5. Was substantial value added in the process(es)?

Determination of whether manufactured goods are considered substantially transformed in the U.S. and may therefore be considered produced in the U.S. must be made by the ARRA recipient (with the likely assistance of their attorney and engineer or architect). Because goods substantially transformed in the U.S. are considered produced in the U.S., their incorporation into a project does not require a waiver from the Buy American requirement.

Exception (Waiver) Process: The recipient is responsible for requesting an exception to ARRA Buy American requirements if needed. Project specific exceptions may not be used unless requested by the recipient, reviewed and recommended by the State Office, and approved by the Secretary of Agriculture. The National Office may issue categorical exceptions, which address classes of exceptions and may affect more than one project. Two such waivers have been issued (see De Minimis Waivers below).

The State Office will follow the process described in Exhibit 4 to process a request for an exception. Proper and sufficient explanation and justification, including written documentation and data, must be provided by the recipient. A checklist detailing the types of information required for an exception to be processed is attached as Exhibit 5. Requests for exceptions will be reviewed by the State Engineer or Architect to ensure the information described in Exhibit 6 is included in the request.

If all required documentation in sufficient quality is included in the request, the State Office will provide the RD Buy American Coordinator (BAC) with the required information via the RD Buy American SharePoint web site. The State Office has the responsibility to review each proposed waiver and should reject it if it is incomplete or is determined not to be needed.

The RD BAC will notify the State Office of the approval or disapproval of any requested exception and the award official will notify the recipient and revise any Letter of Conditions to indicate any iron, steel, or manufactured goods not produced in the United States, but allowed in the project. The National Office will publish a notice of any approvals by the Secretary in the Federal Register within two weeks of the Secretary's determination.

Justifications (2 CFR 176.80): Any exception must be based on one of the following three justifications:

1. Nonavailability. Iron, steel, or relevant manufactured goods are not produced or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality;
2. Unreasonable cost. The cost of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25 percent; or
3. Public interest. The application of these restrictions would be inconsistent with the public interest.

Timeliness of Request for Exception (2 CFR 176.120): In accordance with 2 CFR 176.120 all requests submitted after the date of obligation of ARRA funds are considered late requests. Because no ARRA funds were obligated after September 30, 2010, all requests for waivers submitted at this time are considered late requests.

Because any new waiver request will now be considered a late request, the recipient must explain why it could not request the exception before obligation or why the need for the exception was otherwise not reasonably foreseeable. If the award official concludes that the recipient should have made the request before obligation of ARRA funds, the award official may deny the request without further review.

Since no additional ARRA obligations are authorized, if an exception is approved, an amendment to the Letter of Conditions will be needed. If an exception is approved after award of a construction contract, the State Office must require the recipient to notify the engineer or architect and contractor(s) of any waivers.

Because of the need for timely requested exceptions, it is strongly encouraged that recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help 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. It may also inform the recipient of the need to request an exception prior to bid and can help inform the recipient of compliance options.

Amendment of Award: If any requests are approved by the Secretary of Agriculture, the award official will amend the award to allow use of the excepted foreign iron, steel, or relevant manufactured good(s). The following additional steps will be taken by the award official depending upon the basis for the determination:

1. Nonavailability or Public Interest - amend the award to reflect adjustment of the award amount, redistribute budgeted funds, and/or take other actions to cover costs associated with acquiring or using the foreign iron, steel, or manufactured goods.
2. Unreasonable cost - adjust the award amount or redistribute budgeted funds as needed to ensure sufficient funds to cover at least 125% of the total project cost calculated using the cost of domestic iron, steel, and manufactured goods.

De Minimis Waivers: Two general exceptions to the ARRA Section 1605 Buy American provisions have been signed by the Secretary. The first addressed the Water and Waste Disposal program (74 FR 48901 - 48902) and the second addressed the Community Facilities program (75 FR 34685 - 34687). See Exhibit 3 for language to be inserted for Water and Waste Disposal projects and Community Facilities projects in the Advertisement for Bids, Information for Bidders, and Supplemental General Conditions.

Both waivers define de minimis items as components otherwise prohibited in Section 1605(a) that cumulatively comprise no more than a total of 5 percent of the total costs of the materials used in a project funded in whole or in part with ARRA assistance. The intent of the waivers is explained in the waiver notice where de minimis components are described as the thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, construction of a project.

Assistance recipients using these waivers must work with their contractors to determine the items to be covered by the waiver, retain relevant documentation as to the items in their project files, and be able to summarize in reports to the government, if requested. The recipient must also record the types and/or categories of items to which the waiver is applied, the total cost of each type or category of incidental components covered by the waiver for each type or category, and the calculations for the total cost of materials used in and incorporated into the project.

RD staff should inform assistance recipients of their responsibilities in the event that one of these waivers may be used. Employees shall not instruct recipients, consulting architects or engineers, or construction contractors on whether iron, steel, or manufactured goods should fall under a de minimis waiver.

Construction Contract Provisions: The State Engineer or State Architect will ensure that the provisions, attached to Exhibit 3, are added to the construction contract documents.

Construction Phase Requirements – Noncompliance (2 CFR 176.130): The RD award official has several responsibilities regarding enforcement of the Buy American provisions in ARRA, including the following:

1. Review of all allegations of violations;
2. Unless fraud is suspected, notify the borrower or grantee of any unauthorized use of foreign iron, steel, or manufactured goods and request a reply with proposed corrective action;
3. If review reveals that foreign iron, steel, or manufactured goods were used without authorization, take one of the following actions:
 - a. Process a recipient's request for an exception.
 - b. Require the removal and replacement of unauthorized foreign iron, steel, and /or manufactured goods.
 - c. Determine in writing that the unauthorized foreign iron, steel, and /or manufactured goods need not be removed and replaced. To make this determination, the removal must be impractical, cause undue delay, or otherwise be detrimental to the interests of the federal government. This determination does not prevent the government from reducing the amount of financial assistance by the cost of the foreign iron, steel, or manufactured goods or taking enforcement or termination action against the contractor or owner.
 - d. Additional remedies may include withholding cash payments pending correction of the deficiency, suspension or termination of an award, and withholding further awards for the project. Also, referrals to the Agency Suspension and Debarment official in accordance with RD Instruction 1940-M and referral to the Office of the Inspector General may be considered for serious or fraudulent violations.
4. Report all allegations of violations to National Office Director, Program Support Staff (PSS) for Community Facilities and Business Programs or Director, Engineering and Environmental Staff (EES) for the Water and Waste Disposal Program within 30 days of notification.

Purchase of Equipment and Materials: Materials and equipment purchases are only subject to the requirements of Section 1605 of ARRA if the equipment or materials are to be incorporated into a project for construction, alteration, maintenance, or repair.

Responsibilities of Consulting Engineers and Architects: Section 1605 of ARRA requires that recipients must comply with Buy American provisions of the statute. To ensure compliance, the consulting engineers and architects who design public buildings and public works for ARRA recipients must ensure bidding and other documents meet the ARRA requirements.

There are several documents that consulting engineers and architects must develop or approve between design and construction to be compliant with the ARRA. This includes: (1) the plans, specifications, and bidding documents, (2) approval of substitutes and equals, (3) approval of shop drawings, and (4) change orders requiring design revisions. The information below discusses each of these documents and provides language that should be added to the Agreement for Engineering or Architectural Services to address issues that may arise.

Plans, Specifications, and Bidding Documents: To comply with ARRA a consulting engineer or architect must develop plans, specifications, and bidding documents that do not include iron, steel, and manufactured goods produced outside the U.S., unless those goods are the subject of a waiver signed by the Secretary of Agriculture and published in the Federal Register.

A certification must also be provided by consulting engineers and architects prior to advertisement for bids stating that the documents comply, to the best of the designer's knowledge, with the Buy American provisions of ARRA. This certification is not intended to be a warranty in any way, but rather the designer's professional opinion that to the best of their knowledge the documents comply. Attached (Exhibit 7) is an example of this certification.

Approval of Substitutes and Equals: Whenever an item of material or equipment is included in the specifications by brand name, the consulting engineer or architect must consider other brand name products proposed as equals or substitutes by bidders or contractors. Part of the approval process now includes ensuring that proposed brand name products meet ARRA requirements before concurring that they are otherwise acceptable. Although the Agency does not require a certification for these items, the consulting engineer or architect may include language in the bidding or contract documents requiring that bidders and contractors submit a certification that proposed substitutes and equals meet ARRA requirements with any such submittal.

Approval of Shop Drawings: The consulting engineer or architect is required to review and approve shop drawings and so may need confirmation from the contractor that each shop drawing complies with ARRA. Although the Agency does not require a certification for these items, the State Engineer or Architect should allow the consultant to include language, on behalf of the recipient, in the bidding documents requiring that contractors submit a certification with any such submittal.

Change Orders Requiring Design Revisions: If a change order is required that modifies the design of the project, the consulting engineer or architect must ensure that the additional design work meets ARRA requirements. Change orders must be submitted to the Agency for written approval per 7 CFR 1780.76 (h)(2) and 7 CFR 1942.18 (n)(8). Each submittal of

a change order for approval to the Agency should include a certification similar in wording to the attached certification.

The following additional service will be added to all agreements between owner and consulting engineer or other accepted standard contracts between the owner and consulting architect for ARRA-funded projects. The Agency will instruct the owner to direct the consulting engineer or architect in writing to add one of the following clauses. For existing agreements, this clause may need to be added by amendment.

For EJCDC contracts:(EJCDC E-500, A.2.01.A.26): “Services required to determine and certify that to the best of the engineer’s knowledge and belief all iron, steel, and manufactured goods referenced in the plans, specifications, bidding documents, and change orders requiring design revisions are either produced in the United States or are the subject of a waiver according to the requirements of Section 1605 of the American Recovery and Reinvestment Act as approved by the Secretary of Agriculture and services required to determine to the best of the engineer’s knowledge and belief that approved substitutes, equals, and shop drawings are also either produced in the United States or are the subject of a waiver according to the requirements of Section 1605 of the American Recovery and Reinvestment Act as approved by the Secretary of Agriculture.”

For American Institute of Architects (AIA) contracts: “Services required to determine and certify that to the best of the architect’s knowledge, all iron, steel, and manufactured goods referenced in the plans, specifications, bidding documents, and change orders requiring design revisions are either produced in the United States or are the subject of a waiver according to the requirements of Section 1605 of the American Recovery and Reinvestment Act. Services required to determine, to the best of the architect’s knowledge, that manufactured goods referenced in approved substitutes, equals, and shop drawings are also either produced in the United States or are the subject of a waiver according to the requirements of Section 1605 of the American Recovery and Reinvestment Act.”

This language or similar language can be used in any Agency accepted contract form submitted.

Consulting engineers and architects will likely request additional payment for these services because the additional review and certification responsibilities are not listed as part of basic services in standard contract documents used for any of the programs. Costs will be estimated by the consultant and evaluated by the State Engineer or Architect for reasonableness. The Agency will ensure sufficient funds are added to the project budget to cover these costs if they were not included at obligation.

If a consulting architect intends to bill for these services, the contract documents should be used to describe the additional services. When AIA contracts are used, the effort, which may include product research, verification, certifications or waiver requests, should be defined under the Additional Services section of the AIA contract.

The consulting engineer or architect must verify to the best of their knowledge and belief that the plans, specifications, and bidding documents, approved substitutes or equals, shop drawings, and change orders requiring design revisions indicate that manufactured products that are either produced in the United States or are the subject of a waiver of the requirements of Section 1605 of ARRA as approved by the Secretary of Agriculture.

Note that consulting engineers and architects may need to require separate certifications from bidders, contractors, and manufacturers in order to provide the information required

herein. The State Engineer or Architect should allow any minor changes to the documents to enable such certifications to be added.

Vehicles: As previously stated in this AN, if any ARRA funds are included in a project, all construction, alteration, maintenance, and repair are subject to the requirements of Section 1605. In addition, to further support the objectives of ARRA and guidance provided by President Obama, RD is requiring that any vehicles purchased with ARRA funds must also be manufactured in the United States. Requests for exceptions relating to vehicles shall be processed in the same manner as requests for iron, steel, or manufactured goods, however, approval may be granted by the respective agency Administrator, or designee, if adequate justification is provided. Requests for exceptions need to include a detailed justification that explains why an exception should be granted. Requests may be based on the following factors: non-availability, unreasonable cost, or inconsistency with the public interest.

Items Determined to be Nonavailable: Items listed in 48 CFR 25.104(a) are unavailable. These include: spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available, wood products, including logs, veneer, and lumber of Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum, vitae, mahogany, and teak, petroleum, crude oil, unfinished oils, and finished products, and rubber (crude and latex).

Attachments

Exhibit 1

2 CFR 176.140 Award term—Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the award term described in the following paragraphs:

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means 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.

(2) *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.

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

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate “none”]

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable

when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act . (1)(i)
Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron,

steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

*[*Include all delivery costs to the construction site.]*



United States Department of Agriculture
Rural Development

Exhibit 2

2 CFR 176.80 Exceptions

(a) 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 in accordance with §176.110.

(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.

(b) 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). The Federal Register notice or information from the notice may be posted by OMB to Recovery.gov. The notice shall include -

(i) The title "Buy American Exception under the American Recovery and Reinvestment Act of 2009";

(ii) The dollar value and brief description of the project; and

(iii) A detailed written justification as to why the restriction is being waived.

Exhibit 3

Construction Contract Provisions

Advertisement for Bids: “This contract is funded in whole or in part using funds from the American Recovery and Reinvestment Act (ARRA). Section 1605 of the ARRA prohibits the use of these funds unless all iron, steel, and manufactured goods are produced in the United States. All iron and steel manufacturing processes must take place in the United States, except for metallurgical processes involving refinement of steel additives. There is no requirement for the origin of components and subcomponents of manufactured goods. Products listed at 48 CFR 25.104(a) have been determined to be unavailable in the United States and if required for the project may be purchased from foreign sources. No unauthorized use of foreign iron, steel, and/or manufactured goods will be allowed on this project. {The following exceptions apply to this project:}”

Information for Bidders: “This contract is funded in whole or in part using funds from the American Recovery and Reinvestment Act (ARRA). Section 1605 of the ARRA prohibits the use of these funds unless all iron, steel, and manufactured goods are produced in the United States. All iron and steel manufacturing processes must take place in the United States, except for metallurgical processes involving refinement of steel additives. There is no requirement for the origin of components and subcomponents of manufactured goods. Products listed at 48 CFR 25.104(a) have been determined to be unavailable in the United States and if required for the project may be purchased from foreign sources. No unauthorized use of foreign iron, steel, and/or manufactured goods will be allowed on this project. {The following exceptions apply to this project:}”

Supplemental General Conditions: “This contract is funded in whole or in part using funds from the American Recovery and Reinvestment Act (ARRA). Section 1605 of the ARRA prohibits the use of these funds unless all iron, steel, and manufactured goods are produced in the United States. All iron and steel manufacturing processes must take place in the United States, except for metallurgical processes involving refinement of steel additives. There is no requirement for the origin of components and subcomponents of manufactured goods. Products listed at 48 CFR 25.104(a) have been determined to be unavailable in the United States and if required for the project may be purchased from foreign sources. No unauthorized use of foreign iron, steel, and/or manufactured goods will be allowed on this project. {The following exceptions apply to this project:}”

For Water and Waste Disposal Projects add the following to the Advertisement for Bids, Information for Bidders, and Supplemental General Conditions:

The Secretary of Agriculture has determined that the following de minimis waiver may apply to this project if needed.

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Notice of Buy American Exception Under the American Recovery and Reinvestment Act of 2009

AGENCY: Rural Utilities Service, U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice of a nationwide exception to the Buy American requirements of Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA) under the authority of Section 1605(b)(1) (public interest waiver) for de minimis incidental components of eligible water infrastructure projects using assistance provided under ARRA. This action permits the use of non-domestic iron, steel and manufactured goods when they occur in de minimis incidental components that may otherwise be prohibited under Section 1605(a). As used in this Notice, "de minimis incidental components" means those components otherwise prohibited under Section 1605(a) that cumulatively comprise no more than a total of 5 percent of the total cost of the materials used in a project funded in whole or in part with ARRA assistance.

DATES: Effective Date: September 25, 2009.

ADDRESSES: Send any correspondence regarding this notice to Jacqueline M. Ponti-Lazaruk, Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-1548.

FOR FURTHER INFORMATION CONTACT: Benjamin Shuman, Senior Environmental Engineer, Engineering and Environmental Staff, (202) 720-1784, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-1571.

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of ARRA and Section 176.80 of the rules of the Office of Management and Budget (OMB) (2 CFR 176.80), RUS hereby provides notice that it is granting a nationwide exception to Section 1605 of the Recovery Act with respect to de minimis incidental components of eligible water infrastructure projects funded under the ARRA. The basis for this waiver is a public

interest determination pursuant to Section 1605(b)(1) of ARRA.

I. Background

The American Recovery and Reinvestment Act of 2009 made available \$3,672,475,732 to RUS to make direct loans and grants for rural water, wastewater and waste disposal programs authorized by Sections 306 and 310B and described in Section 381E(d)(2) of the Consolidated Farm and Rural Development Act. Section 1605(a) of ARRA, the "Buy American" provision, states that "none of the funds appropriated or otherwise made available by this 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 in the United States."

Section 1605(b) of ARRA authorizes the head of a Federal department or agency to waive the Buy American provision by one of the following three determinations: (1) Applying the Buy American provision would be inconsistent with the public interest; (2) the iron, steel, and relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the iron, steel, and manufactured goods produced in the United States will increase the cost of the project by more than 25 percent. If a determination is made to waive the requirements of Section 1605(a) based on a finding under Section 1605(b), then Section 1605(c) requires the head of the department or agency to publish a detailed justification in the Federal Register as to why the provision is being waived. Finally, Section 1605(d) requires that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

II. Public Interest Finding

RUS has determined that, as applied to water and wastewater projects, the application of the Buy American restrictions to de minimis situations would be inconsistent with the public interest.

Water and wastewater infrastructure projects typically contain a relatively small number of high-cost components incorporated into the project that are iron, steel and manufactured goods, such as pipe, tanks, pumps, motors, instrumentation and control equipment, treatment process equipment, and relevant materials to build structures for facilities such as treatment plants, pumping stations and pipe networks. In bid solicitations for water and wastewater projects, these high-cost components are generally described in detail in project-specific technical specifications, and utility owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost and, most relevant to this Notice, the country of manufacture of such components.

Every water or wastewater infrastructure project also involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, construction of the project. During construction, these components (for example, nuts, bolts, fasteners, tubing, and gaskets), are incorporated into the physical structure of the project. For many of these incidental components, the

country of manufacture and the availability of alternatives are not always readily or reasonably identifiable. More importantly, the miscellaneous character of these components, together with their low cost (both individually and when procured in bulk), characterize them as incidental to the facility or project.

RUS finds that it would be inconsistent with the public interest to apply the Buy American requirement to incidental components when they in total comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project. While individual components may have the same function (e.g., brackets), the specific manufacturer and configuration may vary from project to project, making the analysis and consideration of individual waiver requests for them, including determining whether or not U.S. made products exist, is expected to be time-consuming and labor intensive far out of proportion to the percentage of total project materials they comprise. Further, since the specific use of these low-cost components can be expected to be widely varied, formulating categorical waivers for specific types of components would be impractical. Because the situations described above, i.e. a high number of low-cost, miscellaneous components, can be effectively addressed by a comprehensive application of a nationwide de minimis waiver, RUS finds that it would be inconsistent with the public interest to apply the Buy American requirement to incidental components when they in total comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project.

In some instances, the Rural Utilities Service and the Environmental Protection Agency's (EPA) Clean Drinking Water State Revolving Funds (SRF) program jointly fund water infrastructure projects. The EPA undertook inquiries to identify the approximate scope of incidental components within its SRF water infrastructure projects. The responses were consistent and indicated that the percentage of total costs for drinking water or wastewater treatment infrastructure projects represented by these incidental components is generally not in excess of 5 percent of the total costs of the materials used in and incorporated into a project.

As a result of its research and analysis, EPA published two Federal Register notices of de minimis waivers. The first was published on Tuesday, June 2, 2009 (FR Vol. 74, No. 104, pp. 26398 and 26399), and set forth the EPA's determination with respect to a public interest finding on de minimis. The second notice, which revised the first, was published on Monday, August 10, 2009 (FR Vol. 74, No. 152, pp. 39959 and 39960). By these waivers the EPA has also determined that imposing ARRA's Buy American requirements for the category of de minimis incidental components is not in the public interest.

While the authorizing statutes and funding sources for the EPA and RUS borrowers are different, the types of projects that EPA finances under its SRF program are substantially similar in size, scope and purpose as those funded by RUS and, as stated above, some projects are jointly funded by RUS and EPA. The Rural Utilities Service has decades of experience in financing water and wastewater projects in rural America and shares the EPA's rationale with respect to incidental components used in similar projects. With respect to jointly-funded projects, it is desirable to avoid disparate treatment of components based on whether or not ARRA funds come from EPA or RUS. Section 1605 should be administered consistently, both within a particular Federal

agency and, to the extent possible, between agencies. Promoting consistent treatment and avoiding unnecessary delays in committing ARRA financing to projects around the country are crucial to the success of ARRA. Requiring individual waivers for incidental components would be time prohibitive and overly burdensome for applicants and RUS. The purpose of ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are "shovel ready." Therefore, a de minimis waiver of incidental components totaling no more than 5 percent of total project costs is in the public interest.

III. Waiver

Based on the public interest finding discussed above and pursuant to Section 1605(c), USDA hereby issues a national waiver from the requirements of ARRA Section 1605 for any incidental components of the type described above that comprise in total a de minimis amount of the project, specifically, for any such incidental components up to a limit of no more than 5 percent of the total cost of the materials used in and incorporated into a project.

Assistance recipients who elect to use this waiver shall, in consultation with their contractors, determine the items to be covered by this waiver, retain relevant documentation as to those items in their project files, and be able to summarize in reports to RUS, if so requested, the types and/or categories of items to which this waiver is applied, the total cost of incidental components covered by the waiver for each type or category, and the calculations by which they determined the total cost of materials used in and incorporated into the project.

In using this waiver, assistance recipients must consider that there may be circumstances where there are multiple types of low-cost components which, when combined with the incidental components described above, may total more than 5 percent.

Assistance recipients in such cases will have to choose which of these incidental components will be covered by the waiver and which will not. Components that the recipient is unable to include within the 5 percent limit of this waiver must comply with the requirements of section 1605 of ARRA by appropriate means other than reliance on this waiver.

Further, as described above, in some cases RUS and EPA jointly fund projects. Both RUS and EPA have issued de minimis waivers that have a cap of a total of 5 percent of project costs. In the case of a jointly funded project, these waivers shall not be combined to create a waiver of greater than 5 percent of total project costs.

This supplementary information constitutes the "detailed written justification" required by Section 1605(c) of ARRA and Section 176.80 of the Office of Management and Budget's rules for waivers of the Buy American provisions.

Authority: Public Law 111-5, Section 1605.

Dated: September 21, 2009.
Thomas J. Vilsack,
Secretary

For Community Facilities Projects add the following to the Advertisement for Bids, Information for Bidders, and Supplemental General Conditions:

The Secretary of Agriculture has determined that the following de minimis waiver may apply to this project if needed.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Buy American Exception Under the American Recovery and Reinvestment Act of 2009

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) hereby gives notice of a nationwide exception to the Buy American requirements of Section 1605 of the American Recovery and Reinvestment Act of 2009 ("ARRA") under the authority of Section 1605(b)(1) (public interest waiver) for de minimis incidental components of eligible publicly owned essential community facilities projects using assistance provided under ARRA. This action permits the use of non-domestic iron, steel and manufactured goods when they occur in de minimis incidental components that may otherwise be prohibited under Section 1605(a). As used in this Notice, "de minimis incidental components" means those components otherwise prohibited under Section 1605(a) that cumulatively comprise no more than a total of 5 percent of the total cost of the materials used in a project funded in whole or in part with ARRA assistance.

DATES: Effective Date: June 18, 2010.

ADDRESSES: Send any correspondence regarding this notice to William R. Downs, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0761, Washington, DC 20250-0761.

FOR FURTHER INFORMATION CONTACT: William R. Downs, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0761, Washington, DC 20250-0761, Telephone: 202-720-1499, e-mail: William.downs@wdc.usda.gov.

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of ARRA and Section 176.80 of the rules of the Office of Management and Budget (OMB) (2 CFR 176.80), RHS hereby provides notice that it is granting a nationwide exception to Section 1605 the Recovery Act with respect to de minimis incidental components of eligible Community Programs projects funded under ARRA. The basis for this waiver is a public

interest determination pursuant to Section 1605(b)(1) of ARRA.

I. Background

The American Recovery and Reinvestment Act of 2009 made funding available to RHS to make direct loans and grants for essential community facilities authorized by Sections 306(a)(1) and (a)(19) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(1) and (a)(19), respectively). Section 1605(a) of ARRA, the "Buy American" provision, states that "none of the funds appropriated or otherwise made available by this 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 in the United States."

Section 1605(b) of ARRA authorizes the head of a Federal department or agency to waive the Buy American provision by one of the following three determinations: (1) Applying the Buy American provision would be inconsistent with the public interest; (2) the iron, steel, and relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the iron, steel, and manufactured goods produced in the United States will increase the cost of the project by more than 25 percent.

If a determination is made to waive the requirements of Section 1605(a) based on a finding under Section 1605(b), then Section 1605(c) requires the head of the department or agency to publish a detailed justification in the Federal Register as to why the provision is being waived. Finally, Section 1605(d) requires that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

II. Public Interest Finding

RHS has determined that, as applied to Community Programs projects, the application of the Buy American restrictions to de minimis situations would be inconsistent with the public interest.

Community Programs projects typically contain a relatively small number of high-cost components incorporated into the project that are iron, steel and manufactured goods, such as electrical and mechanical equipment, concrete and masonry products, wood and steel framing products, interior and exterior materials and finishes, and specialty equipment as well as other relevant materials to build structures for facilities such as community hospitals and clinics, fire stations, police stations and schools. In bid solicitations for Community Programs projects, these high-cost components are generally described in detail in project-specific technical specifications, and public owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost and, most relevant to this Notice, the country of manufacture of such components.

Every Community Programs project also involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, construction of the project. During construction, these components (for example, nuts, bolts, fasteners, screws and

nails), are incorporated into the physical structure of the project. For many of these incidental components, the country of manufacture and the availability of alternatives are not always readily or reasonably identifiable prior to procurement in the normal course of business. More importantly, even if for some of these incidental components the country of manufacture may be known, the miscellaneous character of these components, together with their low cost (both individually and when procured in bulk), characterize them as incidental to the facility or project.

RHS finds that it would be inconsistent with the public interest to apply the Buy American requirement to incidental components when they, in total, comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project. While individual components may have the same function (e.g. brackets), the specific manufacturer and configuration may vary from project to project; the analysis and consideration of individual waiver requests for them, including determining whether or not U.S. made products exist; therefore, is expected to be time-consuming and labor intensive far out of proportion to the percentage of total project materials they comprise. Further, since the specific use of these low-cost components can be expected to be widely varied, formulating categorical waivers for specific types of components would be impractical. Because the situations described above, i.e., a high number of low-cost, miscellaneous components, can be effectively addressed by a comprehensive application of a nationwide de minimis waiver.

Rural Development reviewed an industry-wide survey regarding these incidental components prepared by an independent contractor on behalf of the Environmental Protection Agency (EPA). The survey results indicated that the percentage of total costs represented by these incidental components is generally not in excess of 5 percent of the total cost of the materials incorporated into a project. Rural Development then took the added step to verify the EPA findings by making similar inquiries to likely Rural Development project construction contractors to identify the approximate scope and cost of incidental components within these projects. The responses received by Rural Development were consistent with the EPA data.

RHS has decades of experience in financing Community Programs projects in rural America and shares the rationale established by previous de minimis waivers authored by EPA and Rural Utilities Service, with respect to incidental components used in similar projects. Requiring individual waivers for incidental components would be time prohibitive and overly-burdensome for applicants and RHS. The purpose of ARRA is to stimulate economic recovery by funding current public construction. Therefore, a de minimis waiver of incidental components totaling no more than 5 percent of the total cost of the materials used in and incorporated into a project is in the public interest.

III. Waiver

Based on the public interest finding discussed above and pursuant to Section 1605(c), USDA hereby issues a national waiver from the requirements of ARRA Section 1605 for any incidental components of the type described above that comprise in total a de minimis amount of the

project, specifically, for any such incidental components up to a limit of no more than 5 percent of the total cost of the materials used in and incorporated into a project.

Assistance recipients who elect to use this waiver shall, in consultation with their contractors, determine the items to be covered by this waiver, retain relevant documentation as to those items in their project files, and be able to summarize in reports to RHS, if so requested, the types and/or categories of items to which this waiver is applied, the total cost of incidental components covered by the waiver for each type or category, and the calculations by which they determined the total cost of materials used in and incorporated into the project.

In using this waiver, assistance recipients must consider that there may be circumstances where there are multiple types of low-cost components which, when combined with the incidental components described above, may total more than 5 percent. Assistance recipients in such cases will have to choose which of these incidental components will be covered by the waiver and which will not. Components that the recipient is unable to include within the 5 percent limit of this waiver must comply with the requirements of Section 1605 of ARRA by appropriate means other than reliance on this waiver.

This supplementary information constitutes the "detailed written justification" required by Section 1605(c) of ARRA and Section 176.80 of the Office of Management and Budget's rules for waivers of the Buy American provisions.

Dated: May 6, 2010.
Dallas P. Tonsager,
Under Secretary, Rural Development.

May 11, 2010.
Thomas Vilsack,
Secretary, Department of Agriculture.

Exhibit 4

State Office Responsibilities Step-by-Step Processing of Requests for Exceptions to Buy American Requirements of ARRA. The State Office is responsible to review requests for exceptions.

1. A recipient of ARRA funds may submit a request for an exception from the requirements of the Buy American provision, section 1605 of ARRA. A recipient request to use foreign iron, steel, and/or manufactured goods shall include adequate information for evaluation of the request including all the information listed at 2 CFR 176.140(c) and (d) (see [Exhibit 1.](#))
2. If the award official is at the State Office level, take the following step before the State Engineer or Architect review. The award official will review the recipient's explanation for why it could not request the determination before the obligation was made or why the need for such determination was otherwise not reasonably foreseeable. If the award official concludes that the recipient should have made the request before obligation of ARRA funds, the award official may deny the request at the State Office level and reject the request. If the award official is at the National Office level, the award official at the National Office will make this determination prior to further processing of the request.
3. The State Engineer or Architect next ensures that the exception is needed. If they do not think the exception is needed, such as would be the case if a product were available from a source where it was produced in the United States, then the request may be considered unnecessary. The State Engineer or Architect also reviews all submitted requests to ensure they are complete, including all items from Exhibit 6. The review by the State Engineer or Architect is limited to determining that the request is needed and includes sufficient documentation to support the justification(s).
4. If the State Director concurs with the State Engineer or Architect determination, the request is submitted to the RD Buy American Coordinator (BAC) at the National Office via the ARRA SharePoint website. A copy of the request should be provided to the Assistant Administrator or Deputy Administrator of the specific program.
5. The BAC will be responsible for ensuring review of the request at the National Office through oversight of a cross functional "Technical Team". The BAC will also obtain signatures, including that of the Secretary of Agriculture for any exception requests recommended for approval.
6. If any request is not recommended for approval, the BAC will notify the State Office. In any case where approval is not recommended by the National Office, the State Office will notify the recipient that the request was denied and that use of iron, steel, and manufactured goods produced in the United States is required.
7. If the Secretary approves a request, the BAC will notify the State Office and ensure that a Federal Register notice is published within two weeks of the determination as required by OMB regulations.
8. Upon receipt of notice of approval by the Secretary, the State Office will notify the recipient of funds. As soon as the determination is made, the recipient may proceed with the project using iron, steel, or manufactured goods not produced in the United States per the approved exception request.
9. Letters of Conditions must be modified after any approval by the Secretary to clarify specifically which items not produced in the United States are authorized for use in the project. If an exception is approved after award of a construction contract, the State Office must require the recipient to notify contractor(s) of any waivers.

Exhibit 5

Checklist for Recipients Submitting Waiver Requests: The purpose of this checklist is to ensure that all appropriate and necessary information is submitted to RD. Please review this checklist and provide all required information to RD. This checklist is for informational purposes only and does not need to be included as part of exception request.

Items	✓	Notes
<p>General</p> <ul style="list-style-type: none"> ❖ Exception request includes the following information: <ul style="list-style-type: none"> ○ Description of the foreign and domestic construction materials ○ Unit of measure ○ Quantity ○ Price ○ Time of delivery or availability ○ Location of the construction project ○ Name and address of the proposed supplier ○ A detailed justification for the use of the foreign construction materials ○ An explanation of why the request for a waiver could not have been made before obligation or why the need for a waiver was not otherwise reasonably foreseeable. 		
<p>Waiver request based on Cost</p> <ul style="list-style-type: none"> ❖ Exception request includes the following information: <ul style="list-style-type: none"> ○ Price Comparison Table showing comparative costs of foreign and domestic iron, steel, or manufactured goods with units, quantities, and prices. ○ Relevant documents used to complete the Price Comparison Worksheet ○ Supporting documentation indicating a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contracted suppliers 		
<p>Waiver request based on Availability</p> <ul style="list-style-type: none"> ❖ Exception request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the exception is requested: 		

<ul style="list-style-type: none"> ○ Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials ○ Documentation of efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers ○ Project schedule ○ Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials <p>❖ Exception request includes a statement confirming the non-availability of the domestic construction materials for which the exception is sought</p>		
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Exhibit 6

Checklist for State Engineers and Architects Reviewing Waiver Requests: To be completed by the State Engineer or Architect. Review all requests using the questions in this checklist and mark the appropriate box as Yes, No, or N/A. If any of the marks fall in a No box, the request should be rejected as not complete and returned to the recipient.

Review Items	Yes	No	N/A	Comments
<p>General</p> <ul style="list-style-type: none"> ❖ Does the exception request includes the following information: <ul style="list-style-type: none"> ○ Description of the foreign and domestic construction materials ○ Unit of measure ○ Quantity ○ Price ○ Time of Delivery or availability ○ Location of the construction project ○ Name and address of the proposed supplier ○ A detailed justification for the use of the foreign construction materials ❖ Does the exception request indicate if it is submitted before the construction contract was signed? ❖ If the construction contract was signed, does the exception request include a document detailing the reasons for the late request? 				
<p>Waiver request based on Cost</p> <ul style="list-style-type: none"> ❖ Does the exception request include the following information: <ul style="list-style-type: none"> ○ Price Comparison Table showing comparative costs of foreign and domestic iron, steel, or manufactured goods with units, quantities, and prices? ○ Relevant documents used to complete the Price Comparison Worksheet? ○ Supporting documentation to indicate a reasonable survey of the market, such as a description of the process for 				

<p>identifying suppliers and a list of contracted suppliers?</p>				
<p>Waiver request based on Availability</p> <ul style="list-style-type: none"> ❖ Does the exception request include the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the exception is requested: <ul style="list-style-type: none"> ○ Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials? ○ Documentation of efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers? ○ Project schedule? ○ Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials? ❖ A statement confirming the non-availability of the domestic construction materials for which the exception is sought? 				

Exhibit 7

Sample certification letter to be completed by the consulting engineer or architect.

XYZ Consultants, Inc.
A Street
Anytown, USA 12345

Mayor
Town of Borrower
Main Street
Borrower, State 12345

Re: Subject Project

Dear Honorable Mayor:

The plans, specifications, and bidding documents for the subject project have been developed by me or under my supervision. I hereby certify that to the best of my knowledge and belief all iron, steel, and manufactured goods referenced in the documents are either required to be produced in the United States or are the subject of a waiver of the requirements of Section 1605 of the American Recovery and Reinvestment Act as approved by the Secretary of Agriculture. This certification is not intended to be a warranty in any way, but rather the designer's professional opinion that to the best of their knowledge the documents comply.

Sincerely,
Engineer/Architect