

steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

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

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

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the 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 commercial quantities 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 or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) 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 ac-

cordance with paragraph (b)(4) 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, or manufactured goods 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 appropriate 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, as appropriate, 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 other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

## OMB Guidance, Grants and Agreements

## § 176.170

(d) *Data*. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant 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.]

[74 FR 18450, Apr. 23, 2009, as amended at 75 FR 14323, Mar. 25, 2010]

### § 176.170 Notice of Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the notice described in the following paragraphs in the solicitation:

(a) *Definitions*. *Designated country iron, steel, and/or manufactured goods, foreign iron, steel, and/or manufactured good, manufactured good, public building and public work, and steel*, as used in this provision, are defined in 2 CFR 176.160(a).

(b) *Requests for determinations of inapplicability*. A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by 2 CFR 176.160 (c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of section 1605 of the

Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals*. If the Federal Government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost if foreign iron, steel, or manufactured goods are used based on unreasonable cost of comparable domestic iron, steel, or manufactured goods.

(d) *Alternate project proposals*. (1) When a project proposal includes foreign iron, steel, and/or manufactured goods, other than designated country iron, steel, and/or manufactured goods, that are not listed by the Federal Government in this Buy American notice in the request for applications or proposals, the applicant may submit an alternate proposal based on use of equivalent domestic or designated country iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with paragraphs 2 CFR 176.160(c) and (d) for the proposal that is based on the use of any foreign

**Pt. 176, Subpt. B, App.**

**2 CFR Ch. I (1–1–24 Edition)**

iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.160(b) does not apply, the Federal

Government will evaluate only those proposals based on use of the equivalent domestic or designated country iron, steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic or designated country items.

**APPENDIX TO SUBPART B OF 2 CFR PART 176—U.S. STATES, OTHER SUB-FEDERAL ENTITIES, AND OTHER ENTITIES SUBJECT TO U.S. OBLIGATIONS UNDER INTERNATIONAL AGREEMENTS (AS OF FEBRUARY 16, 2010)**

States	Entities covered	Exclusions	Relevant international agreements
Arizona .....	Executive branch agencies ....	.....	—WTO GPA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Arkansas .....	Executive branch agencies, including universities but excluding the Office of Fish and Game.	Construction services .....	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
California .....	Executive branch agencies ....	.....	—WTO GPA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Colorado .....	Executive branch agencies ....	.....	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Connecticut .....	—Department of Administrative Services —Department of Transportation.. —Department of Public Works.. —Constituent Units of Higher Education.	.....	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Delaware .....	—Administrative Services (Central Procurement Agency). —State Universities. —State Colleges.	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Florida .....	Executive branch agencies ....	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Georgia .....	—Department of Administrative Services. —Georgia Technology Authority.	Beef; compost; mulch .....	—U.S.-Australia FTA.
Hawaii .....	Department of Accounting and General Services.	Software developed in the State; construction.	—WTO GPA. —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.

## OMB Guidance, Grants and Agreements

## Pt. 176, Subpt. B, App.

States	Entities covered	Exclusions	Relevant international agreements
Idaho .....	Central Procurement Agency (including all colleges and universities subject to central purchasing oversight).	.....	—WTO GPA. —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Illinois .....	—Department of Central Management Services.	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —U.S.-Australia FTA. —U.S.-Chile FTA.  —U.S.-Peru TPA. —U.S.-Singapore FTA. —U.S.-EC. Exchange of Letters (applies to EC Member States for procurement not covered by WTO GPA and only where the State considers out-of-State suppliers).
Iowa .....	—Department of General Services —Department of Transportation. —Board of Regents' Institutions (universities).	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Kansas .....	Executive branch agencies ....	Construction services; automobiles; aircraft.	—WTO GPA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Kentucky .....	Division of Purchases, Finance and Administration Cabinet.	Construction projects .....	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Louisiana .....	Executive branch agencies ....	.....	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Maine .....	—Department of Administrative and Financial Services —Bureau of General Services (covering State government agencies and school construction). —Department of Transportation..	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Maryland .....	—Office of the Treasury —Department of the Environment.. —Department of General Services.. —Department of Housing and Community Development.. —Department of Human Resources.. —Department of Licensing and Regulation.. —Department of Natural Resources.. —Department of Public Safety and Correctional Services.. —Department of Personnel. .. —Department of Transportation..	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Massachusetts .....	—Executive Office for Administration and Finance.	.....	—WTO GPA. —U.S.-Chile FTA.

**Pt. 176, Subpt. B, App.**

## 2 CFR Ch. I (1-1-24 Edition)

States	Entities covered	Exclusions	Relevant international agreements
	<ul style="list-style-type: none"> <li>—Executive Office of Communities and Development.</li> <li>—Executive Office of Consumer Affairs.</li> <li>—Executive Office of Economic Affairs.</li> <li>—Executive Office of Education.</li> <li>—Executive Office of Elder Affairs.</li> <li>—Executive Office of Environmental Affairs.</li> <li>—Executive Office of Health and Human Service.</li> <li>—Executive Office of Labor.</li> <li>—Executive Office of Public Safety.</li> <li>—Executive Office of Transportation and Construction.</li> </ul>		—U.S.-Singapore FTA.
Michigan .....	Department of Management and Budget.	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	<ul style="list-style-type: none"> <li>—WTO GPA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Minnesota .....	Executive branch agencies ....		<ul style="list-style-type: none"> <li>—WTO GPA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Mississippi .....	Department of Finance and Administration.	Services .....	<ul style="list-style-type: none"> <li>—WTO GPA.</li> <li>—DR-CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Peru TPA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Missouri .....	—Office of Administration .....		—WTO GPA.
	—Division of Purchasing and Materials Management.		—U.S.-Chile FTA.
Montana .....	Executive branch agencies ....	Goods .....	<ul style="list-style-type: none"> <li>—U.S.-Singapore FTA.</li> <li>—WTO GPA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Nebraska .....	Central Procurement Agency		<ul style="list-style-type: none"> <li>—WTO GPA.</li> <li>—DR-CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
New Hampshire .....	Central Procurement Agency	Construction-grade steel (including requirements on subcontracts), motor vehicles; coal.	<ul style="list-style-type: none"> <li>—WTO GPA.</li> <li>—DR-CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
New York .....	<ul style="list-style-type: none"> <li>—State agencies</li> <li>—State university system.</li> <li>—Public authorities and public benefit corporations, with the exception of those entities with multi-State mandates.</li> </ul>	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal; transit cars, buses and related equipment.	<ul style="list-style-type: none"> <li>—WTO GPA.</li> <li>—DR-CAFTA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Peru TPA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
North Dakota .....			—U.S.-EC Exchange of Letters (applies to EC Member States and only where the State considers out-of-State suppliers).
Oklahoma .....	Department of Central Services and all State agencies and departments subject to the Oklahoma Central Purchasing Act.	Construction services; construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	<ul style="list-style-type: none"> <li>—WTO GPA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Peru TPA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Oregon .....	Department of Administrative Services.		<ul style="list-style-type: none"> <li>—WTO GPA.</li> <li>—DR-CAFTA (except Honduras).</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> </ul>

## OMB Guidance, Grants and Agreements

## Pt. 176, Subpt. B, App.

States	Entities covered	Exclusions	Relevant international agreements
Pennsylvania .....	<p>Executive branch agencies, including:</p> <ul style="list-style-type: none"> <li>—Governor's Office.</li> <li>—Department of the Auditor General.</li> <li>—Treasury Department.</li> <li>—Department of Agriculture.</li> <li>—Department of Banking.</li> <li>—Pennsylvania Securities Commission.</li> <li>—Department of Health.</li> <li>—Department of Transportation.</li> <li>—Insurance Department.</li> <li>—Department of Aging.</li> <li>—Department of Correction.</li> <li>—Department of Labor and Industry.</li> <li>—Department of Military Affairs.</li> <li>—Office of Attorney General.</li> <li>—Department of General Services.</li> <li>—Department of Education.</li> <li>—Public Utility Commission.</li> <li>—Department of Revenue.</li> <li>—Department of State.</li> <li>—Pennsylvania State Police.</li> <li>—Department of Public Welfare.</li> <li>—Fish Commission.</li> <li>—Game Commission.</li> <li>—Department of Commerce.</li> <li>—Board of Probation and Parole.</li> <li>—Liquor Control Board.</li> <li>—Milk Marketing Board.</li> <li>—Lieutenant Governor's Office.</li> <li>—Department of Community Affairs.</li> <li>—Pennsylvania Historical and Museum Commission.</li> <li>—Pennsylvania Emergency Management Agency.</li> <li>—State Civil Service Commission.</li> <li>—Pennsylvania Public Television Network.</li> <li>—Department of Environmental Resources.</li> <li>—State Tax Equalization Board.</li> <li>—Department of Public Welfare.</li> <li>—State Employees' Retirement System.</li> <li>—Pennsylvania Municipal Retirement Board.</li> <li>—Public School Employees' Retirement System.</li> <li>—Pennsylvania Crime Commission.</li> <li>—Executive Offices.</li> </ul>	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	<ul style="list-style-type: none"> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> <li>—WTO GPA.</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Rhode Island .....	Executive branch agencies ....	Boats, automobiles, buses and related equipment.	<ul style="list-style-type: none"> <li>—WTO GPA.</li> <li>—DR-CAFTA (except Honduras).</li> <li>—U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>

States	Entities covered	Exclusions	Relevant international agreements
South Dakota .....	Central Procuring Agency (including universities and penal institutions).	Beef .....	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Tennessee .....	Executive branch agencies ....	Services; construction .....	—WTO GPA-U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Texas .....	Texas Building and Procurement Commission.	.....	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Utah .....	Executive branch agencies ....	.....	—WTO GPA. —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Vermont .....	Executive branch agencies ....	.....	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Washington .....	Executive branch agencies, including: —General Administration. —Department of Transportation. —State Universities.	Fuel; paper products; boats; ships; and vessels.	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
West Virginia .....	.....	.....	—U.S.-EC Exchange of Letters (applies to EC Member States and only where the State considers out-of-State suppliers).
Wisconsin .....	Executive branch agencies, including: —Department of Administration. —State Correctional Institutions. —Department of Development. —Educational Communications Board. —Department of Employment Relations. —State Historical Society. —Department of Health and Social Services. —Insurance Commissioner. —Department of Justice. —Lottery Board. —Department of Natural Resources. —Administration for Public Instruction. —Racing Board. —Department of Revenue. —State Fair Park Board. —Department of Transportation. —State University System.	.....	—WTO GPA. —U.S.-Chile FTA. —U.S.-Singapore FTA.

OMB Guidance, Grants and Agreements

Pt. 176, Subpt. B, App.

States	Entities covered	Exclusions	Relevant international agreements
Wyoming .....	—Procurement Services Division —Wyoming Department of Transportation. —University of Wyoming.	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Other sub-federal entities	Entities covered	Exclusions	Relevant international agreements
Puerto Rico .....	—Department of State —Department of Justice. —Department of the Treasury. ..... —Department of Labor and Human Resources. —Department of Natural and Environmental Resources. —Department of Consumer Affairs. —Department of Sports and Recreation.	Construction services .....  —Department of Economic Development and Commerce.	—DR-CAFTA. —U.S.-Peru TPA.
Port Authority of New York and New Jersey.	.....	Restrictions attached to Federal funds for airport projects; maintenance, repair and operating materials and supplies.	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Port of Baltimore .....	.....	Restrictions attached to Federal funds for airport projects.	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
New York Power Authority .....	.....	Restrictions attached to Federal funds for airport projects; conditions specified for the State of New York	—WTO GPA (except Canada). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Massachusetts Port Authority ..	.....	.....	U.S.-EC Exchange of Letters (applies to EC Member States and only where the Port Authority considers out-of-State suppliers).
Boston, Chicago, Dallas, Detroit, Indianapolis, Nashville, and San Antonio.	.....	.....	U.S.-EC Exchange of Letters (only applies to EC Member States and where the city considers out-of-city suppliers).
Other entities	Entities covered	Exclusions	Relevant international agreements
Rural Utilities Service (waiver of Buy American restriction on financing for all power generation projects).	Any recipient .....	.....	—WTO GPA. —DR-CAFTA. —NAFTA. —U.S.-Australia FTA. —U.S.-Bahrain FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Oman FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Rural Utilities Service (waiver of Buy American restriction on financing for telecommunications projects).	Any recipient .....	.....	—NAFTA. —U.S.-Israel FTA.