



Cooper Products, Expertise and the ARRA



The American Recovery and Reinvestment Act (ARRA) is meant, first and foremost, to stimulate the economy. It is also focused on upgrading our nation's infrastructure, rebuilding the utility grid to move toward a Smart Grid, and retrofitting/constructing new buildings and facilities using energy-efficient lighting and materials.

When Congress passed the final version of the financial stimulus legislation in February 2009, it contained a few key elements that will impact your business:

- Capitol for the renewable-energy industry intended to double domestic renewable energy capacity over the next three years.
- The largest increase in funding for our nation's roads, bridges and mass transit systems since the creation of the national highway system in the 1950s.
- Investment of \$4.5 billion in energy delivery and reliability and \$16.8 billion in energy efficiency.

The majority of Cooper products meet the Buy American requirements of the ARRA. There may be confusion regarding the similarly titled Buy American provisions in other legislation and the Buy American provision of the ARRA relating to domestic iron, steel and manufactured products. This document provides a summary of the various the Buy American provisions that appear in domestic legislation, but it is not intended to provide legal advice.

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Buy America Act (US Code, Title 49, Section 5323(j))

The Buy America Act applies only to grants issued by the Federal Transit Administration and Federal Highway Administration for transit-related procurements in excess of the stated procurement amount. Projects funded by the Federal Highway Administration require all iron and steel products and their coatings to be 100% U.S.-manufactured. Projects funded by the Federal Transit Administration require all steel and manufactured products to have 100% U.S. content and to be 100% U.S.-manufactured. Different rules apply to rolling stock (trains, buses, trolleys, etc.) The Buy America Act is not limited by the NAFTA or WTO Agreement on Government Procurement.

Buy American Act (US Code, Title 41, Section 10 (a-d))

The Buy American Act (often referred to as BAA, not to be confused with the Buy America (no “n”) Act) applies to all U.S. federal government agency purchases of goods over certain contract thresholds. The BAA restricts purchases of supplies and construction materials to domestic products, unless an exception or waiver applies. Unmanufactured products must be mined or produced in the United States. There is a two-part test for manufactured articles: (1) article must be manufactured in the United States, and (2) cost of U.S. components must exceed 50% of the cost of all components in the item. Note: this calculation does not include labor and overhead for final assembly in the United States. The component cost test is waived for commercial-off-the-shelf (COTS) items. BAA waivers may be available, often at the discretion of the contracting officer.

Buy American Provision, American Recovery and Reinvestment Act (ARRA) (Section 1605)

ARRA Section 1605 establishes requirements for federal government projects funded with stimulus monies: “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 all of the iron, steel, and manufactured goods used in

the project are produced in the United States.” Iron and steel used as components or subcomponents of other manufactured construction materials do not need to be produced in the United States. There is no requirement that components and subcomponents be U.S.-origin provided the manufactured construction material is “produced in the United States.” Section 1605 does not contain a domestic cost requirement. However, the government has not defined “produced” for purposes of the ARRA Buy American provision. Many commentators have adopted the “substantial transformation” test to determine whether a manufactured article is “produced” in the United States for purposes of Section 1605. Section 1605 contains a requirement that the Buy American provision be applied in a manner consistent with U.S. obligations under international agreements. As a result, national treatment is extended to products from countries with which the United States has entered a free trade agreement (e.g., Canada, Mexico, Bahrain, Chile, etc.) and to products from countries that have signed the WTO Government Procurement Agreement. National treatment is also extended to least developed countries (e.g., Bhutan, Mali, Zambia, etc.) but not to Caribbean basin countries (e.g., Belize, Haiti, Bahamas, etc.).

How Cooper Can Help

Cooper Industries offers a variety of products, solutions and expertise to upgrade the utility grid and for commercial and industrial new construction, retrofitting and remodeling. Cooper has aligned its businesses, product innovations and acquisition strategies to provide a wide range of solutions that address global business trends including Energy Demand, Energy Efficiency, Global Infrastructure and Safety and Mass Notification. Cooper Industries not only helps customers plan for and utilize stimulus funding, but also helps stimulate your business by providing products and expertise that will improve your operations and enhance the bottom line.

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