

education, hospital, or tribal organization other than one included in the definition of Indian tribe in paragraph (b) of this section.

(ii) A for-profit organization.

(e) *State*, consistent with the definition in section 103 of the TVPA, as amended (22 U.S.C. 7102), means:

(1) Any State of the United States;

(2) The District of Columbia;

(3) Any agency or instrumentality of a State other than a local government or State-controlled institution of higher education;

(4) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and

(5) The United States Virgin Islands, Guam, American Samoa, and a territory or possession of the United States.

## **PART 176—AWARD TERMS FOR ASSISTANCE AGREEMENTS THAT INCLUDE FUNDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUBLIC LAW 111-5**

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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.

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)

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176.180 Procedure.

176.190 Award term—Wage rate requirements under Section 1606 of the Recovery Act.

### **Subpart D—Single Audit Information for Recipients of Recovery Act Funds**

176.200 Procedure.

176.210 Award term—Recovery Act transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients.

AUTHORITY: American Recovery and Reinvestment Act of 2009, Public Law 111-5; Federal Funding Accountability and Transparency Act of 2006, (Pub. L. 109-282), as amended.

SOURCE: 74 FR 18450, Apr. 23, 2009, unless otherwise noted.

#### **§ 176.10 Purpose of this part.**

This part establishes Federal Governmentwide award terms for financial assistance awards, namely, grants, cooperative agreements, and loans, to implement the cross-cutting requirements of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (Recovery Act). These requirements are cross-cutting in that they apply to more than one agency's awards.

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### § 176.20 Agency responsibilities (general).

(a) In any assistance award funded in whole or in part by the Recovery Act, the award official shall indicate that the award is being made under the Recovery Act, and indicate what projects and/or activities are being funded under the Recovery Act. This requirement applies whenever Recovery Act funds are used, regardless of the assistance type.

(b) To maximize transparency of Recovery Act funds required for reporting by the assistance recipient, the award official shall consider structuring assistance awards to allow for separately tracking Recovery Act funds.

(c) Award officials shall ensure that recipients comply with the Recovery Act requirements of Subpart A. If the recipient fails to comply with the reporting requirements or other award terms, the award official or other authorized agency action official shall take the appropriate enforcement or termination action in accordance with 2 CFR 215.62 or the agency's implementation of the OMB Circular A-102 grants management common rule. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(d) The award official shall make the recipient's failure to comply with the reporting requirements a part of the recipient's performance record.

### § 176.30 Definitions.

As used in this part—

*Award* means any grant, cooperative agreement or loan made with Recovery Act funds. Award official means a person with the authority to enter into, administer, and/or terminate financial assistance awards and make related determinations and findings.

*Classified* or "*classified information*" means any knowledge that can be communicated or any documentary material, regardless of its physical form or characteristics, that—

(1)(i) Is owned by, is produced by or for, or is under the control of the United States Government; or

(ii) Has been classified by the Department of Energy as privately generated

restricted data following the procedures in 10 CFR 1045.21; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17, 1995, or classified in accordance with the Atomic Energy Act of 1954.

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

*Recovery funds* or *Recovery Act funds* are funds made available through the appropriations of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

*Subaward* means—

(1) A legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible subrecipient;

(2) The term does not include the recipient's procurement of property and services needed to carry out the project or program (for further explanation, see § \_\_\_.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations"). OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

(3) A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

*Subcontract* means a legal instrument used by a recipient for procurement of property and services needed to carry out the project or program.

*Subrecipient* or *Subawardee* means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § \_\_\_.210 of OMB Circular A-133.

**Subpart A—Reporting and Registration Requirements Under Section 1512 of the American Recovery and Reinvestment Act of 2009**

**§ 176.40 Procedure.**

The award official shall insert the standard award term in this subpart in all awards funded in whole or in part with Recovery Act funds, except for those that are classified, awarded to individuals, or awarded under mandatory and entitlement programs, except as specifically required by OMB, or expressly exempted from the reporting requirement in the Recovery Act.

**§ 176.50 Award term—Reporting and registration requirements under section 1512 of the Recovery Act.**

Agencies are responsible for ensuring that their recipients report information required under the Recovery Act in a timely manner. The following award term shall be used by agencies to implement the recipient reporting and registration requirements in section 1512:

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://>

[www.FederalReporting.gov](http://www.FederalReporting.gov) and ensure that any information that is pre-filled is corrected or updated as needed.

**Subpart B—Buy American Requirement Under Section 1605 of the American Recovery and Reinvestment Act of 2009**

**§ 176.60 Statutory requirement.**

Section 1605 of the Recovery Act prohibits use of recovery funds 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. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver under three circumstances:

(a) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(b) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or

(c) Applying the domestic preference would be inconsistent with the public interest.

**§ 176.70 Policy.**

Except as provided in § 176.80 or § 176.90—

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work (see definitions at §§ 176.140 and 176.160) unless—

(1) The public building or public work is located in the United States; and

(2) All of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.

(i) Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United

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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.

(ii) 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.

(b) Paragraph (a) of this section shall not apply where the Recovery Act requires the application of alternative Buy American requirements for iron, steel, and manufactured goods.

### § 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 non-availability 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.

### § 176.90 Acquisitions covered under international agreements.

Section 1605(d) of the Recovery Act provides that the Buy American requirement in section 1605 shall be applied in a manner consistent with U.S. obligations under international agreements.

(a) The Buy American requirement set out in §176.70 shall not be applied where the iron, steel, or manufactured goods used in the project are from a Party to an international agreement, listed in paragraph (b) of this section, and the recipient is required under an international agreement, described in the appendix to this subpart, to treat the goods and services of that Party the same as domestic goods and services. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of \$7,804,000 or more and projects that are not specifically excluded from the application of those agreements.

(b) The international agreements that obligate recipients that are covered under an international agreement to treat the goods and services of a Party the same as domestic goods and services and the respective Parties to the agreements are:

(1) The World Trade Organization Government Procurement Agreement (Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece,

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Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);

(2) The following Free Trade Agreements:

(i) Dominican Republic-Central America-United States Free Trade Agreement (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua);

(ii) North American Free Trade Agreement (NAFTA) (Canada and Mexico);

(iii) United States-Australia Free Trade Agreement;

(iv) United States-Bahrain Free Trade Agreement;

(v) United States-Chile Free Trade Agreement;

(vi) United States-Israel Free Trade Agreement;

(vii) United States-Morocco Free Trade Agreement;

(viii) United States-Oman Free Trade Agreement;

(ix) United States-Peru Trade Promotion Agreement; and

(x) United States-Singapore Free Trade Agreement.

(3) United States-European Communities Exchange of Letters (May 15, 1995): Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom; and

(4) Agreement between the Government of Canada and the Government of the United States of America on Government Procurement.

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

### **§ 176.100 Timely determination concerning the inapplicability of section 1605 of the Recovery Act.**

(a) The head of the Federal department or agency involved may make a determination regarding inapplicability of section 1605 to a particular case or to a category of cases.

(b) Before Recovery Act funds are awarded by the Federal agency or obligated by the recipient for a project for the construction, alteration, maintenance, or repair of a public building or public work, an applicant or recipient may request from the award official a determination concerning the inapplicability of section 1605 of the Recovery Act for specifically identified items.

(c) The time for submitting the request and the information and supporting data that must be included in the request are to be specified in the agency's and recipient's request for applications and/or proposals, and as appropriate, in other written communications. The content of those communications should be consistent with the notice in § 176.150 or § 176.170, whichever applies.

(d) The award official must evaluate all requests based on the information provided and may supplement this information with other readily available information.

(e) In making a determination based on the increased cost to the project of using domestic iron, steel, and/or manufactured goods, the award official must compare the total estimated cost of the project using foreign iron, steel and/or relevant manufactured goods to the estimated cost if all domestic iron, steel, and/or relevant manufactured goods were used. If use of domestic iron, steel, and/or relevant manufactured goods would increase the cost of the overall project by more than 25 percent, then the award official shall determine that the cost of the domestic iron, steel, and/or relevant manufactured goods is unreasonable.

### **§ 176.110 Evaluating proposals of foreign iron, steel, and/or manufactured goods.**

(a) If the award official receives a request for an exception based on the cost of certain domestic iron, steel, and/or manufactured goods being unreasonable, in accordance with § 176.80, then the award official shall apply evaluation factors to the proposal to use such foreign iron, steel, and/or manufactured goods as follows:

(1) Use an evaluation factor of 25 percent, applied to the total estimated cost of the project, if the foreign iron,

steel, and/or manufactured goods are to be used in the project based on an exception for unreasonable cost requested by the applicant.

(2) Total evaluated cost = project cost estimate + (.25 × project cost estimate, if paragraph (a)(1) of this section applies).

(b) Applicants or recipients also may submit alternate proposals based on use of equivalent domestic iron, steel, and/or manufactured goods to avoid possible denial of Recovery Act funding for the proposal if the Federal Government determines that an exception permitting use of the foreign item(s) does not apply.

(c) If the award official makes an award to an applicant that proposed foreign iron, steel, and/or manufactured goods not listed in the applicable notice in the request for applications or proposals, then the award official must add the excepted materials to the list in the award term.

#### **§ 176.120 Determinations on late requests.**

(a) If a recipient requests a determination regarding the inapplicability of section 1605 of the Recovery Act after obligating Recovery Act funds for a project for construction, alteration, maintenance, or repair (late request), the recipient must explain why it could not request the determination before making the obligation or why the need for such determination otherwise was not reasonably foreseeable. If the award official concludes that the recipient should have made the request before making the obligation, the award official may deny the request.

(b) The award official must base evaluation of any late request for a determination regarding the inapplicability of section 1605 of the Recovery Act on information required by § 176.150(c) and (d) or § 176.170(c) and (d) and/or other readily available information.

(c) If a determination, under § 176.80 is made after Recovery Act funds were obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official must amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When

the basis of 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 manufactured goods. When the basis for the exception is the unreasonable cost of domestic iron, steel, and/or manufactured goods the award official shall adjust the award amount or the budget, as appropriate, by at least the differential established in § 176.110(a).

#### **§ 176.130 Noncompliance.**

The award official must—

(a) Review allegations of violations of section 1605 of the Recovery Act;

(b) Unless fraud is suspected, notify the recipient of the apparent unauthorized use of foreign iron, steel, and/or manufactured goods and request a reply, to include proposed corrective action; and

(c) If the review reveals that a recipient or subrecipient has used foreign iron, steel, and/or manufactured goods without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of section 1605 of the Recovery Act in accordance with § 176.120.

(2) Consider requiring the removal and replacement of the unauthorized foreign iron, steel, and/or manufactured goods.

(3) If removal and replacement of foreign iron, steel, and/or manufactured goods used in a public building or a public work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Federal Government, the award official may determine in writing that the foreign iron, steel, and/or manufactured goods need not be removed and replaced. A determination to retain foreign iron, steel, and/or manufactured goods does not constitute a determination that an exception to section 1605 of the Recovery Act applies, and this should be stated in the determination. Further, a determination to retain foreign iron, steel, and/or manufactured goods does not affect the Federal Government's

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right to reduce the amount of the award by the cost of the steel, iron, or manufactured goods that are used in the project or to take enforcement or termination action in accordance with the agency’s grants management regulations.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate remedies, such as withholding cash payments pending correction of the deficiency, suspending or terminating the award, and withholding further awards for the project. Also consider preparing and forwarding a report to the agency suspending or debaring official in accordance with the agency’s debarment rule implementing 2 CFR part 180. If the non-compliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

**§ 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:

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[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

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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.]

**§ 176.150 Notice of Required Use of American Iron, Steel, and Manufactured Goods—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 do not involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the notice described in the following paragraphs in their solicitations:

(a) *Definitions.* Manufactured good, public building and public work, and steel, as used in this notice, are defined in the 2 CFR 176.140.

(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 paragraphs at 2 CFR 176.140(c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of 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 in the project based on unreasonable cost of comparable manufactured domestic iron, steel, and/or manufactured goods.

(d) *Alternate project proposals.* (1) When a project proposal includes for-

ign iron, steel, and/or manufactured goods not listed by the Federal Government at 2 CFR 176.140(b)(2), the applicant also may submit an alternate proposal based on use of equivalent domestic 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 2 CFR 176.140(c) and (d) for the proposal that is based on the use of any foreign 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 176.140(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic iron, steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic items.

**§ 176.160 Award term—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 awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that involves iron, steel, and/or manufactured goods materials 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—

*Designated country*—(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada,

Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom; or

(4) An Agreement between Canada and the United States of America on Government Procurement country (Canada).

*Designated country iron, steel, and/or manufactured goods*—(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

*Domestic iron, steel, and/or manufactured good*—(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

*Foreign iron, steel, and/or manufactured good* means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

*Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

*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.

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

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of \$7,804,000 or more.

(2) The recipient shall use only domestic or designated country iron,

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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.

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(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.

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(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 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).

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States	Entities covered	Exclusions	Relevant international agreements
Idaho .....	Central Procurement Agency (including all colleges and universities subject to central purchasing oversight).	.....	—U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA. —WTO GPA. —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA. —WTO GPA.
Illinois .....	—Department of Central Management Services.	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA. —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.	—U.S.-Australia FTA. —WTO GPA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.

States	Entities covered	Exclusions	Relevant international agreements
Maryland .....	<ul style="list-style-type: none"> <li>—Office of the Treasury</li> <li>—Department of the Environment..</li> <li>—Department of General Services..</li> <li>—Department of Housing and Community Development..</li> <li>—Department of Human Resources..</li> <li>—Department of Licensing and Regulation..</li> <li>—Department of Natural Resources..</li> <li>—Department of Public Safety and Correctional Services..</li> <li>—Department of Personnel. .</li> <li>—Department of Transportation..</li> </ul>	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>
Massachusetts .....	<ul style="list-style-type: none"> <li>—Executive Office for Administration and Finance.</li> <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>	.....	<ul style="list-style-type: none"> <li>—WTO GPA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
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 .....	<ul style="list-style-type: none"> <li>—Office of Administration .....</li> <li>—Division of Purchasing and Materials Management.</li> </ul>	.....	<ul style="list-style-type: none"> <li>—WTO GPA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Montana .....	Executive branch agencies ....	Goods .....	<ul style="list-style-type: none"> <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>

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States	Entities covered	Exclusions	Relevant international agreements
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> <li>—U.S.-EC Exchange of Letters (applies to EC Member States and only where the State considers out-of-State suppliers).</li> </ul>
North Dakota .....	.....	.....	.....
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> <li>—U.S.-Morocco FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Pennsylvania .....	Executive branch agencies, including: <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> </ul>	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>

States	Entities covered	Exclusions	Relevant international agreements
Rhode Island .....	<ul style="list-style-type: none"> <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> 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>
South Dakota .....	Central Procuring Agency (including universities and penal institutions).	Beef .....	<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>
Tennessee .....	Executive branch agencies ....	Services; construction .....	<ul style="list-style-type: none"> <li>—WTO GPA-U.S.-Australia FTA.</li> <li>—U.S.-Chile FTA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Texas .....	Texas Building and Procurement Commission.	.....	<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>
Utah .....	Executive branch agencies ....	.....	<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.-Peru TPA.</li> <li>—U.S.-Singapore FTA.</li> </ul>
Vermont .....	Executive branch agencies ....	.....	<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>
Washington .....	Executive branch agencies, including: <ul style="list-style-type: none"> <li>—General Administration.</li> <li>—Department of Transportation.</li> <li>—State Universities.</li> </ul>	Fuel; paper products; boats; ships; and vessels.	<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>
West Virginia .....	.....	.....	<ul style="list-style-type: none"> <li>—U.S.-EC Exchange of Letters (applies to EC Member States and only where the State considers out-of-State suppliers).</li> </ul>

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States	Entities covered	Exclusions	Relevant international agreements
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.
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).

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States	Entities covered	Exclusions	Relevant international agreements
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.
U.S. Department of Agriculture, Rural Utilities Services, <i>Water and Waste Disposal Programs</i> (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009).	Any recipient .....	.....	U.S.-Canada Agreement.
U.S. Department of Agriculture, Rural Housing Service, <i>Community Facilities Program</i> (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009).	Any recipient .....	.....	U.S.-Canada Agreement.
U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, <i>Energy Efficiency and Conservation Block Grants</i> (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009).	Any recipient .....	.....	U.S.-Canada Agreement.
U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, <i>State Energy Program</i> (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009 (ARRA)).	Any recipient .....	.....	U.S.-Canada Agreement.

States	Entities covered	Exclusions	Relevant international agreements
U.S. Department of Housing and Urban Development, Office of Community Planning and Development, <i>Community Development Block Grants Recovery</i> (CDBG-R) (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009).	Any recipient .....	.....	U.S.-Canada Agreement.
U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, <i>Public Housing Capital Fund</i> (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009).	Any recipient .....	.....	U.S.-Canada Agreement.
U.S. Environmental Protection Agency for projects funded by reallocated ARRA funds where the contracts are signed after February 17, 2010 (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009).	Any recipient .....	.....	U.S.-Canada Agreement.

*General Exceptions:* The following restrictions and exceptions are excluded from U.S. obligations under international agreements:

1. The restrictions attached to Federal funds to States for mass transit and highway projects.

2. Dredging.

*The World Trade Organization Government Procurement Agreement (WTO GPA) Parties:* Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom.

*The Free Trade Agreements and the respective Parties to the agreements are:*

(1) Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA): Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua;

(2) North American Free Trade Agreement (NAFTA): Canada and Mexico;

(3) United States-Australia Free Trade Agreement (U.S.-Australia FTA);

(4) United States-Bahrain Free Trade Agreement (U.S.-Bahrain FTA);

(5) United States-Chile Free Trade Agreement (U.S.-Chile FTA);

(6) United States-Israel Free Trade Agreement (U.S.-Israel FTA);

(7) United States-Morocco Free Trade Agreement (U.S.-Morocco FTA);

(8) United States-Oman Free Trade Agreement (U.S.-Oman FTA);

(9) United States-Peru Trade Promotion Agreement (U.S.-Peru TPA); and

(10) United States-Singapore Free Trade Agreement (U.S.-Singapore FTA).

*United States-European Communities Exchange of Letters (May 30, 1995) (U.S.-EC Exchange of Letters)* applies to EC Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

*Agreement between the Government of Canada and the Government of the United States of*

## § 176.180

*America on Government Procurement (Feb. 10, 2010) (U.S.-Canada Agreement): Applies only to Canada.*

[75 FR 14324, Mar. 25, 2010]

### **Subpart C—Wage Rate Requirements Under Section 1606 of the American Recovery and Reinvestment Act of 2009**

#### **§ 176.180 Procedure.**

The award official shall insert the standard award term in this subpart in all awards funded in whole or in part with Recovery Act funds.

#### **§ 176.190 Award term—Wage rate requirements under Section 1606 of the Recovery Act.**

When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use the award term described in the following paragraphs:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606,

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contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

### **Subpart D—Single Audit Information for Recipients of Recovery Act Funds**

#### **§ 176.200 Procedure.**

The award official shall insert the standard award term in this subpart in all awards funded in whole or in part with Recovery Act funds.

#### **§ 176.210 Award term—Recovery Act transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients.**

The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures:

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations,” recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at <http://www.whitehouse.gov/omb/circulars/a133/>

*a133.html*. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “ARRA-” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

## PARTS 177–179 [RESERVED]

### PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

- 180.5 What does this part do?
- 180.10 How is this part organized?
- 180.15 To whom do these guidelines apply?
- 180.20 What must a Federal agency do to implement these guidelines?
- 180.25 What must a Federal agency address in its implementation of these guidelines?
- 180.30 Where does a Federal agency implement these guidelines?
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- 180.40 How are these guidelines maintained?
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are excluded from nonprocurement transactions?

#### Subpart A—General

- 180.100 How are subparts A through I organized?
- 180.105 How is this part written?
- 180.110 Do terms in this part have special meanings?
- 180.115 What do subparts A through I of this part do?
- 180.120 Do subparts A through I of this part apply to me?
- 180.125 What is the purpose of the nonprocurement debarment and suspension system?
- 180.130 How does an exclusion restrict a person’s involvement in covered transactions?
- 180.135 May a Federal agency grant an exception to let an excluded person participate in a covered transaction?
- 180.140 Does an exclusion under the nonprocurement system affect a person’s eligibility for Federal procurement contracts?
- 180.145 Does an exclusion under the Federal procurement system affect a person’s eligibility to participate in nonprocurement transactions?
- 180.150 Against whom may a Federal agency take an exclusion action?
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#### Subpart B—Covered Transactions

- 180.200 What is a covered transaction?
- 180.205 Why is it important to know if a particular transaction is a covered transaction?
- 180.210 Which nonprocurement transactions are covered transactions?
- 180.215 Which nonprocurement transactions are not covered transactions?
- 180.220 Are any procurement contracts included as covered transactions?
- 180.225 How do I know if a transaction in which I may participate is a covered transaction?

#### Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

- 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
- 180.305 May I enter into a covered transaction with an excluded or disqualified person?
- 180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?