

U.S. EPA, Office of Grants and Debarment: Agency Process for Required Use of American Iron, Steel, and Manufactured Goods (Section 1605 of the American Recovery and Reinvestment Act of 2009; 2 CFR 176.140 and 176.160)

Friday, May 08, 2009

BOX A: Applicable EPA Programs

Infrastructure often involves activities which are covered under the requirements for Buying American Iron, Steel, and Manufactured goods.

Clean Water and Drinking Water State Revolving Funds: The Recovery Act provides funding for drinking water systems and wastewater treatment works that generally fall within the definition of infrastructure. Funding is also provided for nonpoint source management and estuary conservation activities, most of which is infrastructure investment. A portion of the funds are used for planning activities that are not infrastructure investment.

Leaking Underground Storage Tanks (LUST): The Recovery Act provides funding for cleanup activities that do not generally meet the definition of infrastructure. However, a limited amount of funding under the program is occasionally used to install piping to connect households and businesses to public water systems or replace public water system supply well(s) and associated piping due to groundwater contamination. These connection / replacement activities fall into the category of an infrastructure investment.

Brownfields: The Recovery Act provides funding for site assessment, job training, and cleanup activities that do not generally meet the definition of infrastructure. However, a limited amount of funding may fall into the category of infrastructure where the principal purpose of the activity is to construct a cap to be directly incorporated into a public building or public work as defined in 2 CFR 176.140(a). It may also apply where funds are used to install piping to connect households or businesses to public water systems or replace public water system supply well(s) and associated piping due to groundwater contamination.

Superfund: The Recovery Act provides funding for Superfund remedial cleanup activities that do not generally meet the definition of infrastructure. However, a limited amount of funding may fall under the category of infrastructure where the principal purpose of the activity is to construct a cap to be directly incorporated into a public building or public work as defined in 2 CFR 176.140(a). It may also apply where funds are used to install piping to connect households or businesses to public water systems or replace public water system supply well(s) and associated piping due to groundwater contamination.

Diesel Emission Reduction: The Recovery Act provides funding for diesel engine retrofits that do not meet the definition of infrastructure. A limited portion of the funding may be used for projects involving the construction/ installation of Truck Stop Electrification (TSE) systems. TSE projects are considered to be infrastructure investments. Diesel emissions reductions projects for heavy generators used in public energy production are also considered to be infrastructure investments.

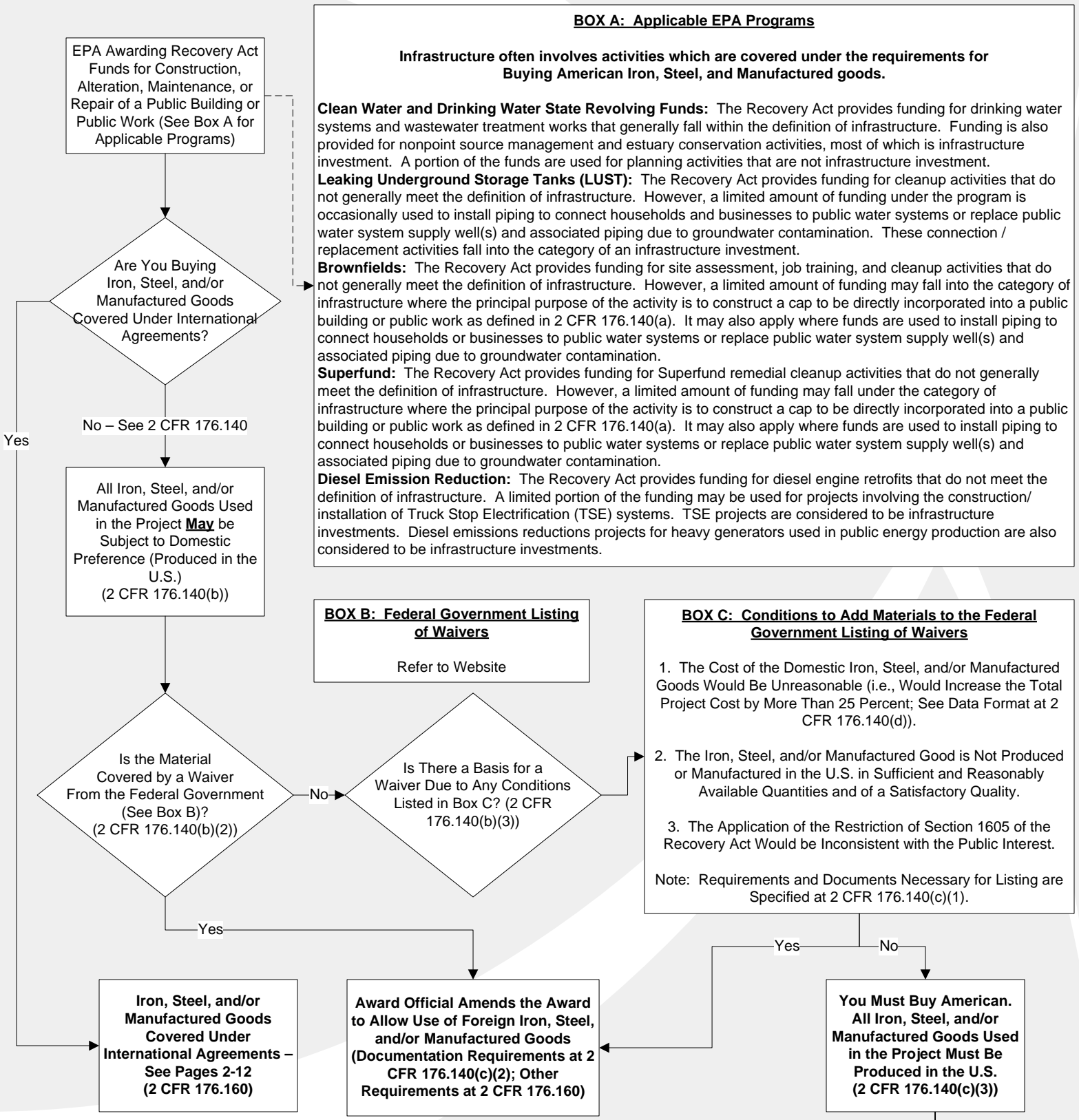
BOX B: Federal Government Listing of Waivers

Refer to Website

BOX C: Conditions to Add Materials to the Federal Government Listing of Waivers

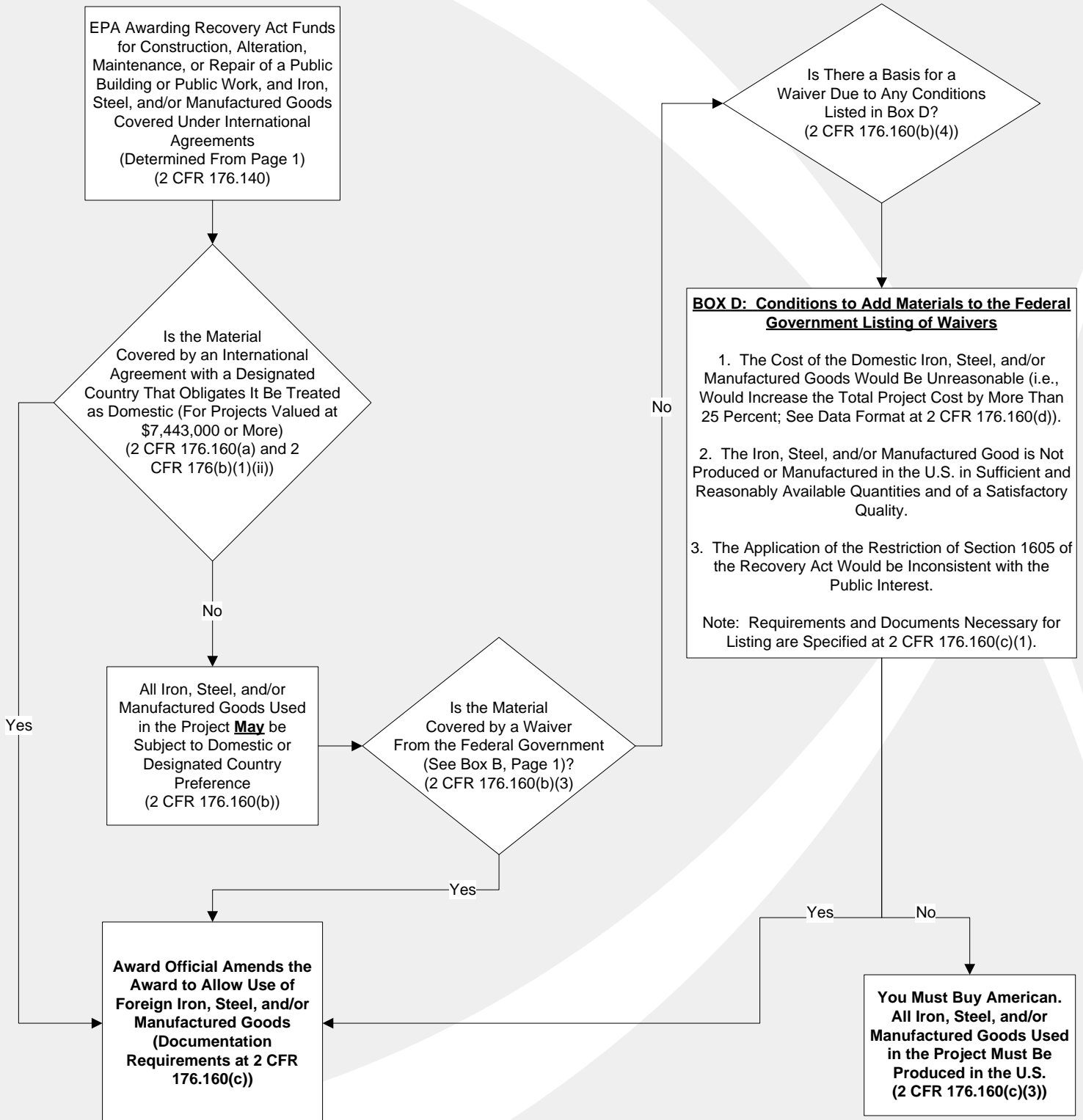
1. The Cost of the Domestic Iron, Steel, and/or Manufactured Goods Would Be Unreasonable (i.e., Would Increase the Total Project Cost by More Than 25 Percent; See Data Format at 2 CFR 176.140(d)).
2. The Iron, Steel, and/or Manufactured Good is Not Produced or Manufactured in the U.S. in Sufficient and Reasonably Available Quantities and of a Satisfactory Quality.
3. The Application of the Restriction of Section 1605 of the Recovery Act Would be Inconsistent with the Public Interest.

Note: Requirements and Documents Necessary for Listing are Specified at 2 CFR 176.140(c)(1).



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U.S. EPA, Office of Grants and Debarment
Agency Process for Required Use of American Iron, Steel, and Manufactured Goods
(Section 1605 of the American Recovery and Reinvestment Act of 2009;
2 CFR 176.140 and 176.160)

April 28, 2009

Section 1605 of the American Recovery and Reinvestment Act of 2009 (codified at 2 Code of Federal Regulations [CFR] 176.140 and 176.160) presents specific provisions for the acquisition of iron, steel, and/or manufactured goods used for construction, alternation, maintenance, or repair of a public building or public work. The regulations specify the required acquisition and use of American-made (domestic) iron, steel, and/or manufactured goods, unless the materials are covered under international agreements or unless the materials are or can be covered by a federal waiver. In the case that the materials are covered under international agreements, the regulations specify that American-made (domestic) or designated country iron, steel, and/or manufactured goods should be used, unless the materials are or can be covered by a federal waiver.

If a project is using American-made (domestic) iron, steel, and/or manufactured goods, there are no further requirements.

If a project is not using American-made (domestic) iron, steel, and/or manufactured goods, the attached flow chart presents a simplified graphical representation of the process and decisions that must be made, as outlined in the regulations. Presented below are the definitions presented in the regulations and a table presenting entities that are subject to U.S. obligations under international agreements.

Definitions (2 CFR 176.140 and 176.160)

Designated Country: A country listed in one of the three following lists: (1) a World Trade Organization Government Procurement Agreement country, (2) a Free Trade Agreement (FTA) country, or (3) a United States-European Communities Exchange of Letters (May 15, 1995) country. These country lists are presented in full at 2 CFR 176.160(a).

Designated Country Iron, Steel, and/or Manufactured Goods: Iron, steel, and/or manufactured goods that are (1) wholly the growth, product, or manufacture of a designated country (see above), or (2) in the case of a manufactured good, that it consist in whole or in part of material from another country and 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 Goods: Iron, steel, and/or manufactured goods that are (1) wholly the growth, product, or manufacture of the United States, or (2) in the case of a manufactured good, that it consist in whole or in part of material from another country and 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 Goods: Iron, steel, and/or manufactured goods that are not from a domestic or designated country.

Manufactured Good: 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 or Public Work: A public building of, and a public work of, a governmental entity, including (but not limited to), 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.

Steel: An alloy that includes at least 50 percent iron, between 0.02 and 2.0 percent carbon (and that may include other elements).

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

States	Entities Covered	Exclusions	Relevant International Agreements
Arizona	Executive branch agencies		-WTO GPA (except Canada) -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 (except Canada) -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 (except Canada) -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Singapore FTA
Colorado	Executive branch agencies		-WTO GPA (except Canada) -DR-CAFTA -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Morocco FTA -U.S.-Peru TPA -U.S.-Singapore
Connecticut	-Department of Administrative Services -Department of Transportation -Department of Public Works -Constituent Units of Higher Education		-WTO GPA (except Canada) -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 (except Canada) -DR-CAFTA (except Honduras) -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Morocco FTA -U.S.-Singapore FTA

States	Entities Covered	Exclusions	Relevant International Agreements
Florida	Executive branch agencies	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal	-WTO GPA (except Canada) -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 (except Canada) -DR-CAFTA (except Honduras) -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Morocco FTA -U.S.-Singapore FTA
Idaho	Central Procurement Agency (including all colleges and universities subject to central purchasing oversight)		-WTO GPA (except Canada) -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 (except Canada) -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 (except Canada) -U.S.-Chile FTA -U.S.-Singapore FTA
Kansas	Executive branch agencies	Construction services; automobiles; aircraft	-WTO GPA (except Canada) -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 (except Canada) -DR-CAFTA -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Morocco FTA -U.S.-Singapore FTA

States	Entities Covered	Exclusions	Relevant International Agreements
Louisiana	Executive branch agencies		-WTO GPA (except Canada) -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 (except Canada) -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 (except Canada) -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 -Executive Office of Communities and Development -Executive Office of Consumer Affairs -Executive Office of Economic Affairs -Executive Office of Education -Executive Office of Elder Affairs -Executive Office of Environmental Affairs -Executive Office of Health and Human Service -Executive Office of Labor -Executive Office of Public Safety -Executive Office of Transportation and Construction		-WTO GPA (except Canada) -U.S.-Chile FTA -U.S.-Singapore FTA
Michigan	Department of Management and Budget	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal	-WTO GPA (except Canada) -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Singapore FTA
Minnesota	Executive branch agencies		-WTO GPA (except Canada) -U.S.-Chile FTA -U.S.-Singapore FTA

States	Entities Covered	Exclusions	Relevant International Agreements
Mississippi	Department of Finance and Administration	Services	-WTO GPA (except Canada) -DR-CAFTA -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Morocco FTA -U.S.-Peru TPA -U.S.-Singapore FTA
Missouri	-Office of Administration -Division of Purchasing and Materials Management		-WTO GPA (except Canada) -U.S.-Chile FTA -U.S.-Singapore FTA
Montana	Executive branch agencies	Goods	-WTO GPA (except Canada) -U.S.-Chile FTA -U.S.-Singapore FTA
Nebraska	Central Procurement Agency		-WTO GPA (except Canada) -DR-CAFTA -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Morocco FTA -U.S.-Singapore FTA
New Hampshire	Central Procurement Agency	Construction-grade steel (including requirements on subcontracts), motor vehicles; coal	-WTO GPA (except Canada) -DR-CAFTA -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Morocco FTA -U.S.-Singapore FTA
New York	-State agencies -State university system -Public authorities and public benefit corporations, with the exception of those entities with multi-state mandates	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal; transit cars, buses and related equipment	-WTO GPA (except Canada) -DR-CAFTA -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Morocco FTA -U.S.-Peru TPA -U.S.-Singapore FTA
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	-WTO GPA (except Canada) -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Peru TPA -U.S.-Singapore FTA

States	Entities Covered	Exclusions	Relevant International Agreements
Oregon	Department of Administrative Services		-WTO GPA (except Canada) -DR-CAFTA (except Honduras) -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Morocco FTA -U.S.-Singapore FTA
Pennsylvania	Executive branch agencies, including: -Governor's Office -Department of the Auditor General -Treasury Department -Department of Agriculture -Department of Banking -Pennsylvania Securities Commission -Department of Health -Department of Transportation -Insurance Department -Department of Aging -Department of Correction -Department of Labor and Industry -Department of Military Affairs -Office of Attorney General -Department of General Services -Department of Education -Public Utility Commission -Department of Revenue -Department of State -Pennsylvania State Police -Department of Public Welfare -Fish Commission -Game Commission -Department of Commerce -Board of Probation and Parole -Liquor Control Board -Milk Marketing Board -Lieutenant Governor's Office -Department of Community Affairs -Pennsylvania Historical and Museum Commission -Pennsylvania Emergency Management Agency -State Civil Service Commission -Pennsylvania Public Television Network -Department of Environmental Resources -State Tax Equalization Board -Department of Public Welfare -State Employees' Retirement System -Pennsylvania Municipal Retirement Board -Public School Employees' Retirement System -Pennsylvania Crime Commission -Executive Offices	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal	-WTO GPA (except Canada) -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Singapore FTA

States	Entities Covered	Exclusions	Relevant International Agreements
Rhode Island	Executive branch agencies	Boats, automobiles, buses and related equipment	-WTO GPA (except Canada) -DR-CAFTA (except Honduras) -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Morocco FTA -U.S.-Singapore FTA
South Dakota	Central Procuring Agency (including universities and penal institutions)	Beef	-WTO GPA (except Canada) -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 (except Canada) -U.S.-Australia FTA -U.S.-Chile FTA -U.S.-Singapore FTA
Texas	Texas Building and Procurement Commission		-WTO GPA (except Canada) -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 (except Canada) -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 (except Canada) -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 (except Canada) -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)

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 (except Canada) -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 (except Canada) -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 Economic Development and Commerce -Department of Labor and Human Resources -Department of Natural and Environmental Resources -Department of Consumer Affairs -Department of Sports and Recreation	Construction services	-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

Other Sub-Federal Entities	Entities Covered	Exclusions	Relevant International Agreements
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)			-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)			-NAFTA -U.S.-Israel FTA

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, Canada, Belgium, Bulgaria, 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.