

US-CANADA TRADE AGREEMENT AND HOW IT AFFECTS BUY AMERICAN REQUIREMENTS UNDER ARRA

A new set of US-Canada trade agreements has recently been negotiated that addresses the implementation of Buy American requirements under ARRA. However, ARRA funding for the Clean and Drinking Water State Revolving Funds (SRFs) was included in the agreements in a limited and contingent way. Because the contingencies that were placed on the inclusion of these SRF funds were not triggered, the practical effect is that **no ARRA funds for the SRFs are covered by these new agreements.**

The agreements were signed on Friday, February 12 and took effect on Tuesday, February 16.

In general, the relevant agreement provides, for ARRA funding, that Canadian-made iron, steel, and manufactured goods are considered (under the "international agreements" provision of ARRA section 1605(d)) to comply with the Buy American requirement of ARRA section 1605(a), where the total estimated value of the project is \$7.443 million or greater. (The figure of \$7.443 million US was identified in the OMB Guidance of April 6, 2009 -- at 2 CFR 176.160(b)(ii), at 74 FR 18456 -- as the threshold for triggering the ARRA section 1605(d) "international agreements" basis for compliance with section 1605.)

Under the SRF appropriation provisions of ARRA, EPA was required to reallocate any ARRA funds that were not placed under "contract or construction", and in executed assistance agreements, by February 17, 2010.

With respect to the SRFs, **the agreement provides that it only covers "U.S. Environmental Protection Agency, Clean Water and Drinking Water State Revolving Funds, for projects funded by reallocated ARRA funds where the contracts are signed after February 17, 2010."** (See the full text of the agreement at http://www.ustr.gov/webfm_send/1638 -- the quoted provision is at page 38 -- and <http://www.ustr.gov/about-us/press-office/press-releases/2010/february/us-canada-sign-agreement-government-procurement>).

The new agreement would thus only apply to any SRF ARRA funds that are reallocated because they did not meet the February 17 "contract or construction" deadline, AND that are placed into projects under contracts signed after February 17, 2010, AND where the total estimated value of the project is \$7.443 million or greater.

Under the December 24, 2009 memorandum describing the ARRA reallocation process (available at <http://www.epa.gov/water/eparecovery/docs/Reallocation12-24-09.pdf>), EPA required all States to provide us with a certification by March 1, 2010, that all ARRA SRF funds have met the requirements of the deadline, or any ARRA SRF funds that did not meet these requirements would be deobligated and reallocated to other States.

EPA has accepted certifications from all States that all ARRA SRF funds were under contract and executed SRF assistance agreements by February 17, 2010. Because all States have thus met the statutory deadline to avoid reallocation, no ARRA SRF funds will be reallocated, and thus no ARRA SRF funds will be covered by this new agreement.

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