

American Recovery and Reinvestment Act

Project Administration and Reporting Requirements for the CWSRF



A Practical Approach for Colorado Assistance Recipients

**Colorado Department
of Public Health
and Environment**



American Recovery and Reinvestment Act

Project Administration and Reporting Requirements for the CWSRF

A Practical Approach for Colorado Assistance Recipients

Prepared by:
Northbridge Environmental Management Consultants
Washington, DC

Table of Contents



1.0	Introduction.....	1
2.0	Complying with Buy American Requirements.....	2
2.1	Applicability.....	2
2.2	Making Substantial Transformation Determinations.....	3
2.3	Documentation.....	4
2.4	The Waiver Process.....	5
3.0	Complying with Davis-Bacon Requirements.....	8
3.1	Wage Determinations.....	8
3.2	Debarment.....	8
3.3	Contracts.....	9
3.4	Reporting.....	9
3.5	Onsite Compliance Verification.....	10
4.0	Complying with Federal and State Reporting Requirements.....	11
4.1	Registration.....	11
4.2	Initial Reporting Requirements.....	12
4.3	Monthly Reporting Requirements.....	13
5.0	Colorado Requirements.....	15
6.0	Complying with Green Project Reserve Requirements.....	16
6.1	Categorical Green Reserve Eligibility	16
6.2	Other Green Reserve Eligibility.....	16
6.3	Developing Good Business Cases.....	17
6.4	The Business Case Review Process.....	18
7.0	Summary.....	19
	Complying with ARRA Requirements - Timeline of Major Action Items.....	19
	References.....	20

Note: Where the word [Appendix](#) appears in this text with a blue box surrounding it, click on [Appendix](#) to open the referenced document in a new window.

1.0 Introduction



Definition:

An Assistance Recipient is a municipality, community, non-profit organization, private enterprise, or other entity receiving ARRA funds through the Clean Water or Drinking Water State Revolving Fund for a water quality or water supply project.

Action Items

- Instruct contractors to display whistleblower poster at the construction site

The American Recovery and Reinvestment Act of 2009 (ARRA) is providing much-needed assistance through the Clean Water and Drinking Water State Revolving Fund Programs (SRFs) to communities in Colorado and across the country. However, this assistance comes with several new Federal requirements which may be unfamiliar to many assistance recipients. The United States Environmental Protection Agency (EPA) is working with the Colorado Department of Public Health and Environment Water Quality Division/Financial Solutions Unit offices (FSU) to help Colorado assistance recipients understand and efficiently comply with ARRA requirements.

This handbook is designed to provide assistance recipients with a comprehensive overview of ARRA requirements and the tools and information necessary to meet all requirements. It explains Buy American country-of-origin limitations and Davis-Bacon prevailing wage rate provisions. It also provides step-by-step instruction on assistance recipient reporting requirements, gathering acceptable and auditable documentation, and developing good business cases for green projects. This information will help assistance recipients organize and plan, accurately report, and avoid potential compliance pitfalls associated with the ARRA reporting process.

Each section addresses a specific provision of ARRA, and details required compliance, documentation, and reporting, including definitions of terms and concepts that are specific to ARRA requirements. Additionally, sample documentation and forms that may be used for tracking and reporting are attached in several appendices.

A Note About Oversight:

The Office of Inspector General (“OIG”) is an independent office within EPA that works to increase the efficiency and cost effectiveness of Federal environmental protection. The OIG will oversee EPA, State, and assistance recipients use of ARRA funds for SRF projects by conducting audits, investigations, and other reviews to ensure efficiency and to **prevent and detect fraud, waste, and abuse**. Assistance recipients, contractors and sub-contractors must allow the OIG access to the project site, project files, and employees.

ARRA law includes protections for whistleblowers who report possible waste, fraud and abuse of ARRA funds. Assistance recipients must require contractors to post the ARRA whistleblower poster (**Appendix A**) at the construction site, and check that it is posted during site inspections.

2.0 Buy American



Action Items

- Instruct design engineer to spec American-made project components wherever possible
- Keep all documentation related to Buy American compliance on file



2.0 Complying with Buy American Requirements

Section 1605 of ARRA requires all iron, steel, and manufactured goods purchased for and incorporated into projects wholly or partially funded by ARRA to have been made in the United States, except where this would be inconsistent with U.S. obligations under international agreements. A waiver process is provided for other necessary exceptions to this requirement. Assistance recipients must keep documentation demonstrating compliance with Buy American provisions on file.

It is important for assistance recipients to consider Buy American provisions throughout all project stages, including development of plans and specs, bidding, construction, and project closure. Design engineers generally have a major role in ensuring that projects are bid according to Buy American requirements. Engaging prime contractors, sub-contractors and vendors/suppliers is another key to successfully meeting Buy American obligations. Many construction vendors and suppliers are already familiar with the requirements of providing American-made goods, as several other Federal infrastructure programs have similar requirements.

Incorporating Buy American into the design process as early as possible helps minimize future delays related to issues of Buy American compliance, which must often be resolved through change-orders. The development of a flow chart identifying the prime contractor, the sub-contractor, as well as vendors and suppliers involved is one way to keep track of compliance.

TIP! The best Buy American compliance comes from the **BOTTOM UP**. Engage players well down the supply chain and get their participation early!

2.1 Applicability

Buy American provisions apply only to iron, steel, and manufactured goods used during construction. They do not apply to sub-components of a domestically manufactured good, raw materials such as plywood, stone, concrete mix, or machinery used but not incorporated into construction.

A manufactured good is defined as a component “brought to the construction site for incorporation into the building or work that has been processed into a specific form and shape, or combined with other raw material to create a material that has different properties than the properties of the individual raw materials.” To determine whether manufacturing has occurred in the United States, assistance recipients should apply the “substantial transformation” test. The country where substantial transformation last occurred for a good is its country-of-origin for the purposes of Buy American.

Action Items

- Complete the STE to determine if any project components will require a Buy American waiver
- Submit the completed “Buy American Checklist for Buy American Compliance” (Appendix B) to FSU
- Keep a copy of the completed STE and any background documents on file

2.2 Making Substantial Transformation Determinations

To determine whether or not a manufactured good is American made, EPA has developed the Substantial Transformation Examination (STE) which consists of these questions in the chart shown below. The Colorado FSU has developed a standard form to document substantial transformation decisions, which can be found in **Appendix B** of this handbook.

STE QUESTION	YES	NO
Were all of the components of the manufactured good manufactured in the United States, and were all of the components assembled into the final product in the US? (If the answer is yes, then this is clearly manufactured in the US, and the inquiry is complete)		
Was there a change in character or use of the good or the components in America? (These questions apply to the product as a whole, not to individual components) <ul style="list-style-type: none"> • Was there a change in the physical and/or chemical properties or characteristics designed to alter the functionality of the good? • Did the manufacturing or processing operation result in a change of a product(s) with one use into a product with a different use? • Did the manufacturing or processing operation result in the narrowing of the range of possible uses of a multi-use product? * Any one bullets answered “yes” passes STE		
Was(/were) the process(es) performed in the US (including but not limited to assembly) complex and meaningful? <ul style="list-style-type: none"> • Did the process(es) take a substantial amount of time? • Was(/were) the process(es) costly? • Did the process(es) require particular high level skills? • Did the process(es) require a number of different operations? • Was substantial value added in the process(es)? ** Any two bullets answered “yes”		

EPA has indicated that these examples DO pass the STE:

- A valve kit with American-made components that is assembled in Mexico, then shipped to the job site IS CONSIDERED AN AMERICAN-MADE construction material.
- Photovoltaic crystals from South America that are used to manufacture cylindrical solar cells ARE CONSIDERED AN AMERICAN-MADE construction material.

The following do NOT pass the STE:

- Cosmetic or surface changes (e.g., painting, lacquering, or cleaning)
- Steel pipes cut to length
- A valve kit with components manufactured in Korea, but assembled in the U.S.

Assistance recipients are ultimately responsible for substantial transformation determinations. However, since contractors, suppliers or manufacturers generally have more knowledge of the manufacturing process than assistance recipients, substantial transformation decisions may be delegated to the person most familiar with the product. Assistance recipients that delegate substantial transformation decisions should make sure they are comfortable with the decision-makers’ process, supporting documentation, and final decision.

Action Items

- Include Buy American requirements in the bid solicitation
- Modify construction contract language to require compliance with Buy American and describe penalties for non-compliance
- Instruct prime contractor to collect Buy American certifications from all vendors
- Instruct prime contractor to provide copies of all Buy American supporting documentation
- Keep copies of Buy American supporting documentation in the project file and at the job site

2.3 Documentation

Assistance recipients must collect auditable documentation of compliance with Buy American provisions from the prime contractor, sub-contractors, vendors, and suppliers, and keep this documentation together in a project folder.

There are several ways assistance recipients can ensure this documentation is collected when required, in a standardized form. Assistance recipients are encouraged to incorporate specific language into performance and service contracts with vendors that include penalties for non-compliance with Buy American requirements. This enables assistance recipients to legally set the standardized parameters for what is considered acceptable documentation. Assistance recipients might also draft a Letter of Understanding and Agreement clearly specifying the type of documentation that is acceptable for compliance, including clear definitions of terms pursuant to ARRA, schedules and timelines for submitting such documentation, and ask contractors, vendors, and suppliers to sign and submit this agreement prior to procurement.

EPA indicates that forms of acceptable, auditable Buy American documentation may include the following:

- Invoices (with redactive pricing)
- Bills of Lading
- Shipping Manifests
- Country of Origin Marking and Labeling
- Cut Sheets (if Country of Origin information is specified)
- Photographs of Serial Numbers (or other reasonable ID) cross-referenced with Cut Sheets
- Certifications from Manufacturers/Suppliers

TIP! Additional assurance of compliance may be met by scheduling random materials checks at the job site or staging area where construction materials are housed.

Many vendors and suppliers have certifications for their products on hand and readily available. It is good practice for the prime contractor to collect a certification for every component used in the project. Many manufacturers, vendors and suppliers are eager to prove compliance with Buy American. However, contractors and assistance recipients should always be sure to use reputable and trustworthy vendors, as there have been reports of vendors issuing false or misleading Buy American certifications, such as in the example below.

“All [XXX] products manufactured by [XXXX], Inc. are manufactured in the United States of America and are fully compliant with the "Buy American" requirement of §1605 of the American Recovery and Reinvestment Act of 2009.

All [XXX] products manufactured by [XXXX], Inc. are cast of ductile iron created from a minimum of 90% post-industrial recycled steel procured within the United States and **within a 500 mile radius of the [XXXX] foundries located in [XXXX], Texas.**”

-Buy American certification from a company located less than 300 miles from the Mexican border

Action Items

- Ask the design engineer to note whether performance parameters will only be achievable with a specific foreign-made good
- Ask design engineer to keep detailed justification for design decisions that may require a waiver



2.4 The Waiver Process

If project plans require a component that is determined to have been manufactured outside of the U.S., assistance recipients may request a waiver from EPA to allow the component to be included in construction. Waiver applications should be submitted as early as possible: ideally, before bidding takes place.

EPA can provide waivers exempting projects from Buy American provisions for the following four reasons:

1. The cost of the domestic materials would increase **entire project cost** by 25% or more.
2. A necessary project component is not produced or manufactured in the U.S. in reasonably available quantities or of a quality required by the project specs. These waivers, referred to as “Availability Waivers,” can be issued if it is determined that only a foreign manufactured good will meet the following project specifications:

- Performance requirements
- Physical characteristics
- Timeliness of delivery

Availability Waivers will only be granted if an assistance recipient provides explicit detail regarding the unavailability of domestically manufactured goods, including assurance that plans, specifications, and bids did not unnecessarily preclude U.S.-manufactured goods.

3. The application of Buy American for a particular construction material or component is inconsistent with public interest.

4. The application of Buy American for a particular construction material or component would be inconsistent with international trade agreements. This has limited applicability for SRF-funded projects, as only Boston, Chicago, Dallas, Detroit, Indianapolis, Nashville, and San Antonio are party to international agreements. Local governments are not party to U.S. federal government international agreements, such as the North American Free Trade Agreement. Additionally, this waiver can only be granted for projects with a minimum cost of \$7.444 million. Assistance recipients who believe they are covered by this waiver are advised to seek local legal counsel.

National (Categorical) Waivers

EPA has issued three National Waivers, which can be applied to any project when applicable:

• Refinancing Waiver

SRF ARRA-funded projects that secured original debt obligations between October 1, 2008 and February 17, 2009 are exempt from Buy American provisions. EPA determined that these assistance recipients obtained financing in anticipation of being refinanced through ARRA, but had, in good faith, lacked prior knowledge that Buy American provisions would be included in ARRA, so it is in the public interest to allow refinancing. Self-financed projects, or projects that incurred costs without obtaining a debt obligation, do not qualify for this waiver.

• Bid Waiver

SRF ARRA-funded projects that solicited bids between October 1, 2008 and February 17, 2009 are exempt from Buy American provisions. EPA determined that it is in the public interest to finance projects that were most ready-to-proceed.

Action Items

- Complete the de minimis tracking spreadsheet (Appendix C) and keep on file
- Keep documentation for national waivers (ie., dated financing agreement, dated bid, and de minimis spreadsheet) on file
- Conduct a reasonable search of the market to check whether comparable U.S.-made goods are available to substitute for foreign-made components
- Ask contractor and design engineer to help assemble supporting documentation for the waiver request
- Assemble a waiver request using the checklist in Appendix D as a guide

• De Minimis Waiver

Assistance recipients may, at their discretion, exempt incidental, low-cost project components that comprise up to 5% of the total costs of materials used in a project from Buy American provisions. EPA determined that it was often impossible to determine the country-of-origin for incidental components, so it was against the public interest to expect assistance recipients to do so. However, assistance recipients must keep accurate records and inventories of the types and categories of items to which the waiver is to apply, as well as the calculation used to determine the value of components that can qualify under the waiver (A sample template for tracking de minimis project components is included in **Appendix C**).

Assistance recipients with projects that qualify for a National Waiver do not need to apply to EPA for a waiver. However, sufficient documentation should be kept on file to demonstrate a project's qualifications for any National Waivers.

TIP! The de minimis waiver may only be applied to incidental, low-cost project components. It should not be applied to a single project component that makes up 5% of the total materials cost.

Project-Specific Waivers

Assistance recipients may also apply for a project-specific waiver under any of the four reasons described previously. A waiver application must properly document cost differentials, comparisons between specifications of foreign-made and domestically manufactured goods, and a demonstration of any and all good faith efforts made on the part of the assistance recipient

recipient and its contractors to locate acceptable American-made construction materials or components.

Appendix D contains the checklist EPA Regions use to ensure that waiver requests include complete and detailed supporting information. Assistance recipients can use this checklist as a guide while assembling the waiver request to confirm that all necessary elements are included. Assistance recipients should require contractors to assist in preparing necessary waiver requests. EPA has indicated that individual waiver application should incorporate the following:

- General product description of the material or component for which a waiver is requested:
 - o Unit of measure
 - o Quantity required
 - o Cost
 - o Time of delivery or availability
 - o Location of the project
 - o Name and address of the proposed supplier
- Justification that identifies the basis for the application citing one (or more) of the four qualifying reasons for exemption (ie., cost, availability, public interest, or international trade agreement).

TIP! Waivers are not guaranteed, so **ALWAYS** make sure the design engineer and contractors have a contingency plan in the event the waiver application is rejected!

Action Items

- Submit waiver request and supporting documentation to EPA Region 8
- Provide a copy of the waiver request and supporting documentation to Colorado FSU
- Provide additional information as requested by EPA, if needed for the waiver review

- A written description of supporting details including:
 - o Technical basis for selecting the product
 - o Process used to identify and evaluate suppliers
 - o Rationale for decision

Complete applications should be submitted directly to the EPA Region 8 Project Officer, at Region8waiver@epa.gov. If Region 8 determines an application is complete, it will be forwarded to a national contractor for technical review. After receiving concurrence from EPA Headquarters, the Region will approve or deny the waiver. Assistance recipients will be notified of the decision, and approved waivers will be published in the Federal Register. The review and determination process generally takes two weeks for completed applications. A list of frequently asked questions about the waiver process is included in **Appendix E**.

TIP! <http://www.epa.gov/water/eparecovery/> contains a list of project-specific waivers that have been approved by EPA

3.0 Davis-Bacon



Action Items

- Use www.dol.gov to find wage determinations for the project location
- Include wage determinations in the bid solicitation
- Monitor www.dol.gov during the bid advertisement for changes in the wage rates
- Compare bidders to the Excluded Parties List at www.epls.gov

3.0 Complying with Davis-Bacon Requirements

Section 1606 of ARRA requires all mechanics and laborers employed on projects funded directly by or assisted in whole or in part with ARRA funds to be paid wages at no less than the locally prevailing rate, as determined by the U.S. Department of Labor (DOL). Contracts must include language that acknowledges this requirement.

DOL determines and publishes prevailing wage rates for the various Regions of the country. DOL Regional offices can provide assistance recipients with help in determining how to apply Davis-Bacon to SRF ARRA projects. A list of Regional offices with contact information may be found at this website:

<http://www.dol.gov/esa/contacts/whd/america2.htm#content>.

Additional Davis-Bacon and other prevailing wage information can also be found at the following DOL website:

<http://www.dol.gov/esa/whd/programs/dbra/faqs.htm>.

3.1 Wage Determinations

Prior to issuing a request for bids or proposals, the assistance recipient must obtain the wage determination for the locality where the ARRA-funded project will take place. To find a wage determination for a project area, assistance recipient should access the Wage Determinations On-Line website at <http://wdol.gov/dba.aspx#0>, and input the state and county where the project will occur, as well as the construction type. Most ARRA projects will fall under the “Heavy” construction type, but assistance recipients should ask their consulting engineer if unsure. The website will generate a list of prevailing wages for the selected county, which should be printed and included in all bid solicitations. Assistance recipients or their engineers should monitor <http://wdol.gov/dba.aspx#0> while the bid remains open to ensure that the wage determination hasn’t changed. If the wage determination changes more than 10 days before the bid opening date, the solicitation will need to be modified to reflect the new wage rate. The wage determination is valid for 90 days after bid opening. If the contract is not awarded within 90 days, the wage determination must be updated with any changes that have occurred during that period.

If a wage determination is not available for the county in which construction will take place, or for a labor category expected to apply to the project, contact FSU for guidance on the proper process for requesting a project-specific wage determination from DOL.

3.2 Debarment

Assistance recipients cannot knowingly award an ARRA construction contract to a contractor who has been debarred or suspended by the Federal government. During the bid evaluation period, assistance recipients should compare all bidders to the “Excluded Parties List” accessible at www.epls.gov. Assistance recipients should make a note in the contract file that the selected bidder has been checked against the Excluded Parties List, and has not been debarred or suspended by the Federal government. Contractors are responsible for verifying the eligibility of sub-contractors.

Action Items

- Include Davis-Bacon text in the bid solicitation
- Include wage determinations in the bid solicitation and all contracts
- Include Davis-Bacon poster requirement in the prime contract
- Include Davis-Bacon compliance language (Appendix G) in all contracts
- Include requirement for the prime to include wage determinations and posting requirements in all sub-contracts

Additionally, prime and sub-contractors must provide certifications with submitted bids agreeing to comply with Davis-Bacon requirements.

If the assistance recipient has already entered into a contract prior to receiving this guidance, it will be necessary to incorporate the wage determination retroactive to the beginning of the contract by change order. In such a case, the contractor must be compensated for any resulting increase in wages.

3.4 Davis-Bacon Reporting

Assistance recipients must collect certified payrolls for all contractors and subcontractors every week. Contractors are responsible for coordinating the submission of sub-contractor payroll records. Certified payroll forms must provide the following information:

- Name of Contractor
- Name of Sub-contractor
- Project Location
- Project Contract Number
- Name of Employee
- Employee identification number (such as the last four digits of the Social Security Number)
- Job classification (full time/part time)
- Weekly number of hours worked
- Hourly rate of pay
- Deductions made
- Actual wages paid

3.3 Contracts

Assistance recipients should inform prime contractors and sub-contractors of Davis-Bacon requirements. EPA requires that the following text (or a variation thereof) be included in all bid solicitations, contracts, and sub-contracts:

“The successful bidder will be required to conform to the wage requirements prescribed by the federal Davis-Bacon and Related Acts which requires that all laborers and mechanics employed by contractors and subcontractors performing on contracts funded in whole or in part Recovery Act appropriations in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits, as determined by the Secretary of Labor, for corresponding classes of laborers and mechanics employed on similar projects in the area.” (U.S. Department of Labor Wage and Hour Division May 29, 2009 Guidance).

The following items should be included in the contract with the prime contractor:

- Department of Labor wage determinations for the project type and location
- Requirement for sub-contractors to apply the same wage determinations
- Requirement for the wage determinations and Davis-Bacon poster (**Appendix F**) to be posted at all times by the contractor and sub-contractors at the work site in a prominent and accessible place
- The clauses included in **Appendix G**

Action Items

- Collect payroll records (WH-347) from prime contractor (W)
- Collect statement of compliance (WH-347) from prime contractor (W)
- Spot-check payroll records to ensure consistency with wage determinations (T)
- Submit payroll records to FSU (M)
- Submit Davis-Bacon Act Certification Form to FSU (M)
- Conduct on-site compliance interviews (T)
- Complete interview form SF 1445 (F)
- Check apprentice/trainee registrations (T)

W: Weekly
M: Monthly
T: At least twice
F: Keep on File

Contractors and sub-contractors must submit a copy of certified payrolls to the assistance recipient weekly. Optional form WH-347 (**Appendix H**) may be used to collect and report all of the information necessary for payroll reporting. To verify that contractors and sub-contractors are paying appropriate wage rates, assistance recipients should spot-check a representative sample of weekly payroll data at least twice during the project. It is important that assistance recipients keep this information on file for at least three years in the event that the Office of the Inspector General inspects the project.

For each payroll submitted to the assistance recipient, the contractor (or his payment supervisor) must also submit a signed statement of compliance. The certification form on the back side of WH-347, is suggested (**Appendix I**).

Assistance recipient should submit payroll data collected from contractors and sub-contractors to FSU on a monthly basis, in conjunction with payment requests for the project. The Davis-Bacon Act Certification Form found in **Appendix J** should be signed and provided to FSU along with each monthly payroll submission. If the prime contractor has submitted payroll records that include employees' social security numbers or home addresses, this information should be blacked out before forwarding the forms to FSU.

3.5 Onsite Compliance Verification

Assistance recipients should also periodically interview a sample of employees on the project site to verify that contractors and sub-contractors are paying appropriate wage rates. Assistance recipients must conduct a minimum of two interviews: the first within two weeks of initial payroll submission, and the second two weeks prior to the completion date for the contract or sub-contract. Standard Form 1445 (Appendix K) should be completed with every interview and kept on file. If the assistance recipient determines that there is a risk a contractor or sub-contractor is not complying with Davis-Bacon, they must conduct more frequent interviews until they are confident that the issue has been resolved. If any violations are discovered, the DOL Wage and Hour District Office should be contacted

(see <http://www.dol.gov/esa/contacts/whd/america2.htm> to determine the appropriate office).

While assistance recipients (or their designated representatives) are at the project site conducting Davis-Bacon interviews, they should take the opportunity to verify that contractors and sub-contractors have the proper registrations and certifications for apprentices and trainees working on the project. Contractors are required to maintain all relevant registrations and certifications on file, and should be able to show these to the assistance recipient easily. Apprentice and trainee registration checks should be conducted on the same schedule as the employee interviews and payroll spot-checks: a minimum of twice during the project, and more often if deemed necessary by the assistance recipient.

TIP! Compliance interviews may be targeted to specific employees. However, they should be confidential, on-site, during working hours, and non-disruptive.

4.0 Reporting



Action Items

- Register for a DUNS number
- Register in the Central Contractor Registry

4.0 Complying with Reporting Requirements

Section 1512 of ARRA requires the FSU to periodically report on the use of ARRA funds. Assistance recipients must therefore submit several types of information to the FSU, including all Buy American documentation and certifications, jobs created and jobs retained data, as well as proof of Davis-Bacon compliance. Assistance recipients might consider hiring a third-party project manager to oversee, coordinate, perform due diligence, and facilitate these compliance efforts. Hiring a third-party ARRA project manager is an SRF-eligible expense. Some municipalities have used this approach with great success through a competitive RFP process and have rolled administrative costs associated with third-party ARRA reporting activities into their total project and loan costs.

4.1 Registration

Prior to receiving a binding commitment for financial assistance from the FSU, assistance recipients must fulfill several registration requirements. Assistance recipients should begin these registration processes early to ensure delays do not delay ARRA funding or impede the ability to meet reporting obligations.

CWSRF programs require any applicant for ARRA funding to obtain a Data Universal Numbering System (DUNS) number from Dunn & Bradstreet. This nine-digit number identifies an organization within a specific industry sector, allowing the Federal government to develop sector-based information that is compared and contrasted with like industries in a local, state and Regional format. This number will be required for assistance recipients to participate in the required reporting activities prescribed under ARRA.

If an assistance recipient already has a DUNS number, there is no need to register for a new one. Otherwise, a DUNS number is free and easy to obtain at: http://www.dnb.com/US/duns_update/.

ARRA also requires assistance recipients to register with Central Contractor Registry (CCR), the primary national database for all who do business with the Federal Government. This database collects, validates and stores vital information related to government procurement, to ensure consistent reporting of data about each entity, be it a municipality or a vendor. The CCR requires a DUNS number for registration, so each recipient and assistance recipient can be identified and tracked by a single registration. Without this requirement, multiple recipients doing business with the same assistance recipients might use different variations of that assistance recipients name, address or parent organization when they report, which could ultimately be problematic in tracking funds. CCR registration is free and easy to obtain through the following steps:

- Check for an existing registration by logging onto www.ccr.gov, clicking on “Search CCR,” and providing the DUNS number.
- If not registered, assistance recipients may do so online.
- The CCR User’s Guide (<http://www.ccr.gov/doc/CCRUsersGuide.pdf>) and handbook (<http://www.ccr.gov/Handbook.aspx>) provide complete details on the information necessary to complete CCR registration, including:
 - o DUNS Number
 - o Tax ID/Social Security Number
 - o Point of Contact (POC)– person responsible for timely and accurate information provided to the CCR
 - o Electronic Business Point of Contact (EB POC) – The same individual may serve as both the CCR and EB POC
 - o Marketing Partner ID (MPIN) – Create a special password to access the CCR system

Action Items

- Collect basic project information for initial reporting
- Provide basic project information to FSU as requested

If an assistance recipient has all of the information gathered, it generally takes about 48 hours to complete CCR registration. However, even minor differences in the information provided, such as an address written as 123 First Street in one database, and 123 1st St. in another database, could cause significant delays.

Assistance recipients should verify that all registrations are current and all information is correct and represented in a standardized format. CCR registration must be updated or renewed at least once a year or it will expire. CCR will alert the CCR POC when it is time for renewal. Remember, attention to detail will help streamline the registration process and avoid any preventable delays.

TIP! Assistance recipients must ensure that all information contained in federal databases (including DUNS, CCR, and the Internal Revenue Service database) matches exactly!

4.2 Initial Reporting Requirements

The first stage in required reporting includes a one time submission of basic project information, generally at loan closing, including:

- Assistance recipient's CCR and DUNS numbers
- Brief descriptive title of the project(s) or activity/activities funded in whole or in part with ARRA funds
- Brief description of the goals and objectives of the project
- Construction start date (actual date the first contract starts)
- Cumulative total cost of the infrastructure investment
- Sources and amounts of non-SRF funding for the project
- Total project cost (including non-ARRA portions)
- A description of the objective of the infrastructure investment
- DUNS number or name and zip code for all contractors or vendors receiving any payment greater than \$25,000
- Project completion date (actual date the last contract is completed)
- The names and compensation of assistance recipient's five most highly-compensated officers/executives. This requirement only applies if all three conditions below are met (see **Appendix L** for complete list of conditions):
 - o Contracting entity received 80% or more of annual gross revenue from federal funding (not limited to ARRA) in prior FY; and
 - o Federal gross revenue exceeds \$25M in prior FY; and
 - o Compensation is not otherwise publicly disclosed (e.g., SEC or IRS filings)

TIP! Reporting executive compensation will in almost all cases not apply to CWSRF assistance recipients.

Action Items

- Report FTEs for created or retained jobs, narrative description of employment impact, project completion percentage, and last contract execution date to FSU (M)

4.3 Monthly Reporting Requirements

The second stage or required reporting includes monthly submission of employment and construction progress data. Monthly reporting from assistance recipients allows the FSU to satisfy its own national level quarterly reporting requirements. Assistance recipients must include reports on the following four data elements with monthly payment requests for the project:

1. Number of jobs created and retained for the entire project
2. Narrative description employment impact
3. Percent completion of the entire project
4. Date the last construction contract was executed

Assistance recipients are required to report an estimate of jobs directly created or retained by the entire project (not just the ARRA-funded portion). It is not the responsibility of assistance recipients to report on the employment impact on materials suppliers (called “indirect” jobs) or on the local community (“induced” jobs). See **Appendix M** for more detailed definitions of these terms. This report should include a brief narrative of types of jobs created or retained as well as an estimated number of each. The number of created or retained jobs should be expressed in terms of the “full-time equivalent” or FTE Calculation where:

$$FTE = \frac{\text{actual hours worked}}{\text{total hours in a full-time schedule}}$$

For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each report. FTEs should be calculated cumulatively each month. The table below demonstrates the cumulative FTE calculation for monthly reporting for an ARRA project beginning construction in August 2009. This example assumes a traditional full-time schedule of 8 hours per day; however, **it is up to the contractor to define how many hours make up a full-time schedule each month.**

Period	Aug 2009 (168 work hours)	Sept 2009 (176 work hours)	Oct 2009 (176 work hours)	Nov 2009 (168 work hours)	Dec 2009 (184 work hours)
(a) Full-Time Schedule (Total Hours)	168	344	520	688	872
Full-Time Employee 1	168	344	520	688	872
Full-Time Employee 2	168	344	520	688	872
Part-Time Employee (half time)	84	172	260	344	436
Temporary Employee (528 hrs.)	0	0	176	344	528
(b) Total Hours Worked by all Employees	420	860	1,476	2,064	2,708
Monthly FTE (line (b)/line (a))	2.5	2.5	2.8	3.0	3.1

Action Items

- Keep notes on file explaining rationale for counting jobs as created or retained
- Establish a system for collecting reporting data from contractors and sub-contractors
- Include reporting responsibilities, processes and timelines in all contracts

Paid leave may be included in work hour calculations. The contractor or sub-contractor should determine what is considered a full-time schedule for all reported positions. Most contractors and subcontractors will use timesheets or certified payrolls, which already must be collected weekly, to develop jobs data. **Appendix N** contains a sample spreadsheet that may be helpful in tracking jobs data. It is important to collect auditable data.

When determining whether a job is created or retained, it may be helpful to note the Date of Hire (DOH). Generally assistance recipients using ARRA funds for infrastructure projects find that basing the DOH on the Notice to Proceed date is more accurate and easier to identify than using the award date. If an individual has a DOH that is prior to the Notice to Proceed date, then that job can typically be counted as retained. If the DOH falls after the Notice to Proceed date, then that job can typically be counted as created. It is important to only count the employment impact that occurred as a result of ARRA. Assistance recipients should use their best judgment to estimate whether a job would have been created or retained in absence of the Recovery Act.

Assistance recipients are only required to report the on-project and other direct job hours related to the ARRA funding. The information requested is the total cumulative number of direct hours worked on the ARRA projects both by the assistance recipient and by contractors and subcontractors at the local project sites. Note that jobs created and retained can be combined for reporting purposes. However, it is a good idea to keep notes in the file briefly explaining the rationale that was used to classify each job as created or retained, in case the project is reviewed by the OIG.

Assistance recipients must also submit a brief narrative describing the employment impact of the ARRA-funded project, consisting of a few sentences describing the impact of the project on the contractor and subcontractors' workforces. Assistance recipients may choose to ask the contractor to write and submit this narrative along with monthly FTE reports.

Assistance recipients have the responsibility for establishing procedures to avoid double-counting and more generally, to ensure the accuracy of the data they submit. It is good practice to formulate a standardized system for sub-contractors and contractors to report jobs data up the reporting chain. It is also recommended that assistance recipients include language in all contracts describing specific reporting responsibilities, processes, and timelines that contractors should follow, including the requirement that contractors collect relevant reporting information from sub-contractors. In order to prevent the FSU from receiving duplicate reporting submittals, assistance recipients are encouraged to coordinate with consulting engineers, who can gather relevant reporting information and documentation from multiple contractors and sub-contractors before submitting to the FSU.

TIP! Much of the documentation containing information to sufficiently report on jobs created/retained is the same information required to substantiate Davis-Bacon Wage Requirements. Try to kill two birds with one stone!

5.0 Colorado Requirements



Action Items

- Attend pre-bid conference
- Attend pre-construction conference
- Submit draft Plan of Operations
- Submit draft O&M Manual
- Submit final O&M Manual
- Submit Letter of Notification
- Attend final inspection

The FSU has developed an additional series of requirements designed to assist assistance recipients in keeping infrastructure construction projects on track and in compliance from pre-bid activities through final inspections. These activities involve the assistance recipient, the project engineer, as well as a FSU Project Manager working collectively to assure ARRA-funded projects are in compliance. They will also help address any technical questions that may arise. **Appendix O** contains required documentation associated with these requirements.

The Pre-Bid Conference

The FSU and Colorado engineering staff will attend the pre-bid conference with assistance recipients to clarify responsibilities among the borrower, contractor and State. This will include responsibilities related to Buy American, Davis-Bacon, Disadvantaged Business Enterprise, and permitting.

The Pre-Construction Conference

The FSU and Colorado engineering will meet with the assistance recipient, consulting engineer and selected contractors and/or suppliers on or before September 30, 2009 to ensure that all requirements for ARRA funding are clearly understood and to assist with construction progress requirements as mandated by the CWSRF program.

Plan of Operations

The FSU requires that a draft Plan of Operations be submitted prior to the start of construction. The final Plan of Operations must be completed by 50% project completion.

Initial Inspections

The FSU will begin its first round of construction project inspections at the end of October 2009, and will complete initial inspections by mid-December 2009.

Quarterly Inspections

Quarterly inspections will begin at the end of December 2009 and continue thereafter until project completion.

Operations & Maintenance (O&M) Manual

Assistance recipients must submit a draft of their O&M Manual to the FSU at 50% project completion. The final O&M Manual must be submitted prior to the Final Construction Inspection at 90% project completion.

Submit Letter of Notification

Assistance recipients must submit a Letter of Notification to the FSU 30 days prior to 100% project completion. This letter will initiate scheduling of the Final Construction Inspection.

Final Construction Inspections

Upon receipt of the Letter of Notification, the FSU will schedule a final inspection with the assistance recipient, which must occur prior to approval of the last disbursement request.

6.0 Green Projects



Action Items

- Consider “green” components that may be incorporated into the project design (if applicable)

6.0 Complying with Green Project Reserve Requirements

ARRA requires that each State CWSRF program direct at least 20% of its capitalization grant toward projects that address green infrastructure, water and/or energy conservation and efficiency, or other environmentally innovative activities. Assistance recipients who receive Green Project Reserve funds have several additional requirements to demonstrate that their project qualifies as green.

6.1 Categorical Green Project Reserve Eligibility

EPA considers several projects types as categorically qualified for Green Project Reserve funding. Categorically qualified projects must demonstrate at least a 20% savings in energy or increase in water efficiency or that demonstrate new or innovative approaches to sustainable water management.

Categorically qualified Green Project Reserve projects can be sorted into four distinct categories:

- Water Efficiency Projects
- Energy Efficiency Projects
- Green Infrastructure Projects
- Environmentally Innovative Projects

Because of the variance of hydrogeologic features, demographics, and environmental challenges in each State, the Green Project Reserve is not “one size fits all”. It is important that assistance recipients focus on locating green project opportunities that are practicable and applicable to that part of the country. For example, the mid-Atlantic States will have greater opportunity to implement green infrastructure and stormwater projects than those states in the Southwest, who will likely have numerous projects that focus on water re-use and recycling. The list of categorically green projects types provided in the EPA Guidance is designed to highlight a wide range of possibilities, but is by no means exhaustive (**Appendix P**).

6.2 Other Green Reserve Eligibility

Other projects or portions of projects may qualify for the Green Project Reserve if a business case is submitted describing the green benefits of the project. Many CWSRF projects provide some water or energy efficiency benefits, but only projects where these green benefits are the project driver and primary motivator provide significant green benefit qualify for Green Project Reserve funding. Projects or project components that qualify will have the following characteristics:

- Substantial water or energy benefits/savings compared to the average level of efficiency available for the project or component, and
- Water and energy efficiency savings are a substantial part of the justification for the project, and are not simply incidental benefits

Generally, projects that incorporate new centralized wastewater treatment processes, infiltration and inflow reductions, pipe repair and/or replacements to address water losses, SCADA systems, or lift station removal projects will all require a business case. While these projects are considered traditional, in certain cases a particularly significant reduction in energy usage or water savings would qualify the project for the Green Project Reserve.

Action Items

- Ask the project engineer to develop a business case for inclusion in the green project reserve, if necessary

Other projects will only qualify for the Green Reserve if they include innovative or sustainable design. A project that incorporates stand-alone facultative ponds or lagoon systems does not qualify for the Green Reserve. However, if the project included the construction of an artificial wetland in addition to facultative treatment cells, the project would then qualify as green (due to environmental benefits such as mimicry of the natural hydrology cycle helping to maintain and restore water balance through infiltration and evaporation or by providing habitat for native flora and fauna).

Projects that incorporate the use of recycled materials or biosolids projects such as composting facilities also require business cases to qualify for Green Reserve funding.

TIP! Green elements can be added to any project to increase green reserve eligibility. There are often many options available that transform a “traditional” project to a “green” project!

6.3 Developing Good Business Cases

In Colorado, many Green Reserve funds are being distributed for projects that require business cases. The FSU will inform assistance recipients if their proposed project requires the preparation of a business case. While there is no official template for business cases, EPA has issued “Guidance on Energy Efficient Business Case for Wastewater Pumping Systems (see Appendix Q), which assistance recipients can follow when compiling data and structuring a business case.

The primary objective of a business case is to provide a succinct, complete report of a project’s green benefits that can quickly and easily be approved by EPA. It should be easy to read, well organized, and include the following elements:

- Quantitative and numerical data wherever possible
- Graphical representations, engineering plans and specs
- Detailed discussion of green project components
 - Why are they necessary?
 - What other alternatives were considered?
 - Why were other alternatives not selected?
- Project costs

TIP! Typically, the project engineer will prepare a business case on behalf of an assistance recipient as they have the most intimate knowledge of the project design.

Action Items

- Keep a copy of the final business case and all supporting documentation on file

Business cases will vary based on the complexity of a project, but must include both a technical and a financial analysis of green benefits. When beginning to build a business case, the following information should be gathered:

Technical Analysis

- Drawings, engineering studies, information from suppliers, technical specifications for the components etc. as further back-up
- For energy and water efficiency projects, data, calculations and specifications demonstrating savings and showing that the selected equipment is of the highest efficiency suitable for the project (Note: if this calculation results in at least a 20% improvement, then the project will be **categorically qualified** for the Green Reserve):

$$\% \text{ Improvement in Energy Efficiency} = \frac{\text{kWh prior to upgrade} - \text{kWh after upgrade}}{\text{kWh prior to upgrade}}$$

- For already efficient facilities that are upgrading to the highest standard of efficiency, an explanation that additional savings were not feasible
- For help determining baseline efficiency standards for different types of projects and equipment, refer to energy efficiency standards set forth by professional engineering and manufacturers associations such as the National Electrical Manufacturers Association (NEMA).

Financial Analysis

- Estimate of cost savings expected from the water or energy efficiency
- For stormwater or innovative projects, justify costs and financial/environmental benefits
- Determination, using total project costs, that water and energy savings are a substantial part of the justification of the project
- Other information, such as payback periods or reductions in O&M expenses

Example of possible business case elements are provided in **Appendix R**.

6.4 The Business Case Review Process

The FSU performs the initial review for completed and submitted business cases. If it is determined that the business case includes all essential elements, the business case is forwarded to EPA Region 8. An established “green panel, consisting of individual experts in various scientific, economic and environmental disciplines, will review, discuss, and ultimately vote on whether or not the proposed project should be designated “green”. This panel may request additional information, if necessary. Once a decision has been made, the Region will notify the FSU.

TIP! It is important that a copy of the final business case and all supporting documentation be kept on file by the assistance recipient in the event of an audit or inspection by the Office of the Inspector General.

7.0 Summary



Now that this handbook has described the major requirements associated with the American Recovery and Reinvestment Act, assistance recipients are ready to proceed with ARRA CWSRF projects in a knowledgeable and responsible way. The staff at the Colorado FSU is eager to help communities understand and implement ARRA requirements for their projects, so assistance recipients should not hesitate to ask for additional guidance. The table below summarizes the main steps detailed in this handbook in chronological order, providing a quick reference of the major action items necessary to implement an ARRA project. By following these basic steps, assistance recipients can be confident that their diligence is contributing to a transparent and accountable economic recovery effort!

Action	Timeframe	Page No.
Identify potential “green” components of the project*	Project development and design	16
Develop a green project business case*	Project development and design	17
Ask architect/engineer to spec American-made components	Project design	2
Complete the Substantial Transformation Examination	Project design	3
Submit the “Buy American Checklist for Buy American Compliance” to FSU	Project design	3
Ask architect/engineer to denote project components that may require a Buy American waiver	Project design	5
Apply for a DUNS number	Prior to loan closing	11
Register with the CCR	Prior to loan closing	11
Attend pre-bid conference	Loan closing	15
Incorporate wage determinations into the bid	Bid advertisement	8
Include Buy American and Davis Bacon requirements in bid solicitations	Bid advertisement	4,9
Collect Buy American supporting documentation from contractors	Bid review	4
Check bidders on the Excluded Parties List	Bid review	8
Apply for a waiver to Buy American requirements *	Bid review	6
Include all ARRA requirements in the construction contract	Contract execution	4,9,14
Attend pre-construction conference	Contract execution	15
Submit draft Plan of Operations	Prior to Notice to Proceed	15
Collect Buy American certifications from all vendors	Procurement	4
Complete the de minimis tracking spreadsheet	Procurement	6
Collect job creation data from contractors	Notice to Proceed through project completion	13
Collect certified payroll and Davis-Bacon statement of compliance (Form WH-348) from contractors	Notice to Proceed through project completion	10
Submit draft O&M Manual to FSU	50% completion	15
Submit payroll records and Davis-Bacon Act Certification Form to FSU	First payroll submission through project completion	10
Conduct on-site Davis-Bacon compliance inspections	First payroll submission through project completion	10
Report job creation and project completion status to FSU	Loan agreement signed though final disbursement	13
Submit final O&M Manual to FSU	90% completion	15
Submit Letter of Completion to FSU	30 days prior to completion	15
Keep documentation of ARRA compliance in organized project files	Ongoing	

*Note: These action items may not be required for all projects

References

- City of Peoria, AZ. (2009). Personal Communication with Shawn Kreuzwiesner, City Engineer on July 17, 2009.
- Code of Federal Regulations. (nd). Customs Duties. 19 CFR Part 177.
- Code of Federal Regulations. (nd). Davis-Bacon and Related Acts Provisions and Procedures. 29 CFR Part 5.5(a).
- Com Sense, Inc. (2009). Personal Communication with Mark Appleby, Federal Program Consultant on June 17, 2009.
- Executive Office of the President – Council of Economic Advisors. (2009). Estimates of Job Creation from the American Recovery and Reinvestment Act of 2009. Retrieved from http://www.recovery.gov/sites/default/files/Jobs_Report_Final.pdf on June 13 2009.
- Frchetti Engineering, Inc.. (2009). Town of Georgetown, Colorado Green Project Reserve Business Case Requirements.
- H.R.1 -111th Congress. (2009). American Recovery and Reinvestment Act of 2009. Pub. L. No. 111-5, Title VII; §1512(c)(3), 1605, 1606.
- Neptune Technology Group, Inc. (2009). Interpreting the Buy American Provision of the American Recovery and Reinvestment Act of 2009 for the Purchase of Water Meters and Meter Reading Systems retrieved from <http://www.wateronline.com/download.mvc/Interpreting-The-Buy-American-Provision-0001?atc~c=771+s=774+r=001+l=a&VNETCOOKIE=NO> on June 15, 2009.
- Office of Management and Budget. (2009). Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards. Federal Register, Vol. 74 No. 77, Pages 18449 – 18463.
- Office of Management and Budget, (April 3, 2009). M-09-15, Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009 .
- Pulice Construction, Inc. (2009). Personal Communication with Mark Soyster, Vice President and Operations Manger of Alternative Project Delivery on June 17, 2009.
- U.S. Department of Labor, Employment Standards Administration Wage and Hour Division. (May 29, 2009). M-207-09 , Applicability of Davis-Bacon labor standards to Federal and federally-assisted construction work funded in whole or in part under provisions of the American Recovery and Reinvestment Act of 2009.
- U.S. Environmental Protection Agency, Office of Grants and Debarment. (2009). Tip Sheet for Registering with the Central Contractor Registration. Retrieved from <http://www.azwifa.gov/publications/ARRA/CentralContractorRegistrationTipSheet.pdf> on June 15, 2009.
- U.S. Environmental Protection Agency Office of Wastewater Management. (May 14, 2009). Energy Efficiency Business Case for Wastewater Pumping Systems for ARRA Green Project Reserve.
- U.S. Environmental Protection Agency Office of Wastewater Management (March 2, 2009). Memorandum regarding the Award of Capitalization Grants with Funds Appropriated by P.L. 111-5, the “American Recovery and Reinvestment Act of 2009”.
- U.S. Environmental Protection Agency Office of Wastewater Management. (April 28, 2009). Memorandum regarding the Implementation of Buy American provisions of P.L. 111-5, the “American Recovery and Reinvestment Act of 2009”.
- Virginia Municipal League. (2009). Federal Stimulus General Information Update. Retrieved from <http://www.vml.org/WNEW/WNFedStimPg.html> on June 13, 2009.