

**GENERAL INFORMATION****BUY AMERICAN**

As the oldest manufacturer of Hollow Metal Doors and Frames in the United States of America, Mesker Door™ shines as a founding member of the Steel Door Institute, and the inventors of the Hollow Metal Door.

Mesker Door™ is proud to manufacture innovative products in the United States of America, utilizing American Steel in the construction of our doors and frames.

Mesker Door™ is a company owned by Americans, run by Americans, and employs American families in Huntsville, Alabama, and across the United States of America.

As a result, Mesker Door™ meets the following qualifications as an American Manufacturer:

**THE BUY AMERICAN ACT****MADE IN THE USA****ASSEMBLED AND MANUFACTURED IN THE USA****THE AMERICAN RECOVERY AND REINVESTMENT ACT'S BUY AMERICAN RULE**

We're glad that you have chosen our products for your project. Please see below for some common questions that you may have about the above requirements.

All information provided in this document is provided for the use of Mesker Door™ and its partners, as an introduction to Mesker Door™, and our compliance with the Buy American statutes. The information below should be used as a guide, and in no way addresses all of the complexity found in the complete versions of these documents. As the information found in the complete versions of these documents is much more detailed, and may change over time, please consult your legal council to find the most current information on the Buy American statutes.

Please specify with your Mesker Door™ distributor that you want American made products on your project!

Thank you for your support.

**GENERAL INFORMATION****BUY AMERICAN****THE BUY AMERICAN ACT**

**Mesker Door™ meets these qualifications.**

**A. Requirements**

1. The end product must be manufactured in the U.S.
  - a. Test to determine whether a product is a valid "domestic end product" under the Buy American Act: the end product, articles, materials, and supplies must be Manufactured in the U.S. That is, the product must have transformed into a new and different article of commerce, with a name, character, or use distinct from the original article.
2. The costs of its components which are mined, produced, or manufactured in the U.S. must exceed 50 percent.
  - a. The cost of the components of the end products that are produced or manufactured domestically which are incorporated directly in the end product must exceed the cost of the foreign produced component parts.

**B. Benefits**

1. A qualifying Buy American Act product creates a preference for suppliers of domestic source end products by government contractors.
2. The act restricts the government's ability to purchase supplies that are not domestic end products. The act also essentially requires the use of only domestic construction materials in the contracts for construction in the United States.

**C. Compliance**

1. Even a minor violation generally requires imposition of some kind of penalty, although an isolated instance of noncompliance may be insufficient to establish a violation.
  - a. For minor violations, penalties range from substituting domestic items to recovering the cost difference between domestic and foreign items.
  - b. For serious violations, the agency may cancel the contract.
2. Decisions applying the Buy American Act are subject to judicial review under a Highly deferential standard, requiring the court to uphold the decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

**MESKER DOOR™ MEETS THE REQUIREMENTS OF THE BUY AMERICAN ACT.**

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**BUY AMERICAN**

**MADE IN THE USA**

**Mesker Door™ meets these qualifications.**

**A. Requirements**

1. Unqualified claim
  - a. "All or virtually all" of the components making a product must be of U.S. origin; i.e., all significant parts and processing that go into the product must be of U.S. origin.
    - i. A negligible amount of foreign parts in the end product is permitted.
    - ii. The product's final assembly or processing must take place in the U.S.
  - b. When a manufacturer or marketer makes an unqualified claim that a product is "Made in U.S.A", it should have a "reasonable basis" to support the claim at the time it is made.
2. Qualified claim
  - a. A qualified claim describes the extent, amount or type of a product's domestic content or processing; it indicates that the product is not entirely of domestic origin.
  - b. This label is appropriate for products that include U.S. content or processing but fail to meet the criteria for making an unqualified claim, e.g., "60% U.S. content", "Made in U.S.A. of U.S. and imported parts", or "Couch assembled in U.S.A from Italian Leather and Mexican Frame."

**B. Benefits**

1. Permits either unqualified or qualified "Made in the U.S.A. Made in America" labeling or advertising claims.

**C. Compliance**

1. Compliance is governed by the FTC, which enforces actions against false or misleading claims that a product is of U.S. origin.
2. The FTC does not pre-approve advertising or labeling claims. A manufacturer or marketer may make any claim as long as it is truthful and substantiated.

**MESKER DOOR™ MEETS THE REQUIREMENTS OF THE MADE IN THE USA MARK.**

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**BUY AMERICAN**

**ASSEMBLED AND / OR MANUFACTURED IN THE U.S.A.**

**Mesker Door™ meets these qualifications.**

**A. Requirements**

1. A product that includes foreign components may be called "Assembled in U.S.A." Without qualification when its principal assembly takes place in the U.S. and the assembly is substantial.
2. The product's last "substantial transformation" must occur in the U.S. In other words, a "screwdriver" assembly in the US. of foreign components into a final product at the end of the manufacturing process would not qualify for the "Assembled in U.S.A." claim.
  - a. "Substantial transformation" requires that a manufacturing process result in a new and different product with a new name, character, and use that is different from that which existed before the change.

**B. Benefits**

1. Since this label is essentially a modification of the "Made in USA. America" claim, the benefits are the same; i.e., the FTC permits an assembled/Manufacture in America" label for advertising and labeling claims for qualifying products.

**C. Compliance**

1. Compliance is the same as the "Made in U.S.A /America" claim; i.e., compliance is governed by the FTC, which enforces actions against false or misleading claims that a product is of U.S. origin.

**MESKER DOOR™ MEETS THE REQUIREMENTS OF THE ASSEMBLED AND / OR MANUFACTURED IN THE U.S.A. MARK.**

## GENERAL INFORMATION

### BUY AMERICAN

#### THE AMERICAN RECOVERY AND REINVESTMENT ACT'S BUY AMERICAN RULE

#### Mesker Door™ meets these qualifications.

The American Recovery and Reinvestment Act's, Buy American rule requires that all iron, steel and manufactured goods on construction projects of public buildings or public works projects must be produced in the United States.

#### A. What projects are subject to the Buy American requirement?

The scope of the requirement can be thought of as a three-part test A project is subject to the requirement if:

- (1) Funds appropriated or otherwise made available by this Act are;
- (2) Used for the construction, alteration, maintenance, or repair of;
- (3) A public building or public work.

Under the first part, most projects that receive funds or a loan guaranteed under the new law are subject to the requirement The second part of the test- "construction, alteration, maintenance, or repair"- includes an extremely broad range of work, but the third part- "public building or public work"- almost certainly excludes work done with respect to any privately owned facility.

#### B. What does it mean to be subject to this requirement?

It means that "all of the iron, steel, and manufactured goods" used in the project must have been produced in the U.S. In other words, if *any* of the iron, steel, or manufactured goods used in the project is produced outside the U.S., the project cannot receive stimulus funding. Depending on how "project" is defined, the use of any foreign iron, steel, or manufactured goods with respect to a small component of a large project could prevent the use of stimulus funds for the entire project

#### C. Does the nationality of the company producing the iron, steel, or manufactured goods matter?

No. The only thing that matters is whether production occurs within the U.S.

#### D. Isn't there already a Buy American requirement in federal law?

Yes, the Buy American Act was originally enacted in 1933. But there are two important differences between that law and the provision in the stimulus legislation. The Buy American Act applies only to procurement by the federal government, and only requires that the cost of domestic components exceeds 50 percent of the cost of all the components.

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E. What circumstances qualify for a waiver under the stimulus law?

A waiver under the stimulus legislation may be granted for "any case or category of cases" where the head of the relevant federal department or agency finds that: (1) applying the prohibition would be "inconsistent with the public interest"; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. "in sufficient and reasonably available quantities and of a satisfactory quality"; or (3) inclusion of iron, steel and manufactured goods produced in the U.S. will increase the cost of the "overall project" by more than 25 percent. If the agency or department head makes such a finding, he or she must publish in the Federal Register a detailed justification as to why the provision is being waived. Perhaps more importantly, the prohibition is also to be applied "in a manner consistent with U.S. obligations under international agreements." This language was added by the Senate in response to strong objections expressed by key trading partners of the U.S., including Canada and the European Union.

F. What does it mean to be consistent with U.S. obligations under international trade agreements?

It's not entirely clear, but the legislative history (discussed in more detail below) suggests that Congress intends that the Obama Administration will use its existing authority under the 1979 Trade Agreements Act to waive the Buy American requirement where it would otherwise violate a free trade agreement or the WTO. There is also an indication that it should be waived for so-called "least developed countries," where they agree to assume the obligations of the WTO and are willing to provide similar opportunities for U.S. products.

G. How soon will all this be resolved?

It depends on how soon the Obama Administration begins issuing waivers, and the breadth of those waivers. At one end of the spectrum, federal departments or agencies could issue one or more very broad waivers on public interest grounds, or based on a finding that iron and steel are not produced in the U.S. in sufficient and reasonably available quantities of satisfactory quality. At the other extreme, departments and agencies could take a narrow, project-by-project approach, issuing a waiver only where there is a showing that the cost of the entire project would otherwise be increased by more than 25 percent.

Based on its obligation to remain consistent with international trade agreements, and concerns about triggering more protectionism, it seems likely that the Obama Administration will move relatively quickly to issue waivers as to countries that are members of either WTO or a free trade agreement. Waivers with respect to the least developed countries would presumably be a lower priority, and waivers with respect to developed countries that are not parties to a free trade agreement or WTO would presumably be lower still.

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From those seeking stimulus dollars, there will be enormous pressure on the administration to quickly remove the cloud of uncertainty created by this provision, and to minimize its effect on projects that would otherwise qualify. Supporters of the prohibition, on the other hand, are not going to give ground without a fight.

**MESKER DOOR™ MEETS THE REQUIREMENTS OF THE AMERICAN RECOVERY AND REINVESTMENT ACT'S BUY AMERICAN RULE.**