American Recovery and Reinvestment Act of 2009, Section 1605 – Buy American (100% Domestic Content of items below)

Federal Aviation Administration (FAA) 49 U.S.C. § 50101 – Buy American (see discretionary waiver when 60% Domestic Content of items below)

Federal Highway Administration (FHWA) 23 U.S.C. § 313 – Buy America; 23 C.F.R. § 635.410 (100% Domestic Content of items below)

Federal Railroad Administration (FRA) High Speed Rail Program 49 U.S.C. Chapters 244, 246; § 24405 – Buy America (100% Domestic Content of items below)

National Railroad Passenger Corporation (AMTRAK) 49 U.S.C. § 24305

Federal Transit Administration (FTA) 49 U.S.C. § 5323(j); 49 C.F.R. Part 661 (Buy America Requirements); (See 60% Domestic Content for buses and other Rolling Stock)

Buy American

The Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

Waivers

The head of the federal department or agency finds that:

(1) It would be inconsistent with the public interest;

(2) The materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

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

Buy America

The Secretary of Transportation shall not obligate any funds unless steel, iron, and manufactured products used in such projects are produced in the United States.

Waivers

The Administrator has delegated authority to grant waivers to this requirement to Director of Acquisition and Contracting; Regional Administrators; and Center Directors upon finding that compliance with the Act would:

(1) It would be inconsistent with the public interest;

(2) The steel and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(3) When procuring a facility or equipment under the Airport and Airway Improvement Act of 1982:

(A) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and

(B) final assembly of the facility or equipment has occurred in the United States; or

(4) Including domestic material will increase the cost of the overall project by more than 25 percent.

Buy America

The Secretary of Transportation shall not obligate any funds unless steel, iron, and manufactured goods used in the project are produced in the United States.

Waivers

Applies to iron and steel products and their coatings that are to be permanently incorporated into the project. The FHWA, in its 1983 rulemaking, determined that Buy America did not apply to raw materials and waived its application to manufactured products, although in the statute, based on the public interest. Lack of adequate domestic supply resulted in a 1995 nationwide waiver for iron ore, pig iron, and reduced/processed pellets manufactured in the United States.

The Administrator may waive the requirement if the Secretary finds that:

(1) It would be inconsistent with the public interest;

(2) The steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(3) Rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or

(4) Including domestic material will increase the cost of the overall project by more than 25 percent.

Other

The requirements only apply to projects for which the costs exceed $100,000.

Labor costs involved in final assembly are not included in calculating the cost of components. All waivers have to be posted in Federal Register.

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Other

The requirements on labor costs apply only to the cost of those articles, material, or supplies bought at least $1 million for the overall project.

Domestic Buying Preferences

Amtrak shall buy only:

(A) unmanufactured articles, material, and supplies mined or produced in the United States; or

(B) manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, and supplies mined, produced, or manufactured in the United States.

Waivers

The Secretary may exempt Amtrak from this subsection if the Secretary decides that:

(A) for particular articles, material, or supplies--

(i) the requirements are inconsistent with the public interest;

(ii) the cost of imposing those requirements is unreasonable; or

(iii) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(B) rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time.

Other

Labor costs involved in final assembly are not included in calculating the cost of components.

Post only “public interest” waivers in Federal Register.


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