

FRA

RAIL

PROGRAM DELIVERY WORKSHOP

JULY 2024 | WASHINGTON, DC

**FRA Buy America
and Related
Requirements**

Panelists



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Buy America: The Legal Standard

- FRA Buy America (49 USC 22905(a))
 - FRA's FAQs (2010)
- Build America, Buy America Act (BABA) (Pub. L. 117-58, § 70914)
 - 2 CFR part 184
 - Final BABA Implementation Guidance (OMB)
- Amtrak Domestic Preference (49 USC 24305(f))
- FRA's Grant Terms and Conditions
 - General Terms (12.1)
 - Program-Specific Clauses

Infrastructure Project Defined

BABA

FRA Buy America (49 USC 22905(a))

FRA GENERAL TERMS AND CONDITIONS – BUY AMERICA

12.1 Buy America

- (a) For infrastructure projects, steel, iron, manufactured goods and construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 CFR part 184, as implemented by OMB, USDOT, and FRA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (b) For all other projects, the Recipient’s acquisition of steel, iron and manufactured goods with funding provided through this Agreement is subject to the requirements set forth in the Buy American Act, 41 U.S.C. §§ 8301-8305. The Recipient also represents that it has never been convicted of violating the Buy American Act nor will it make funding received under this Agreement available to any person or entity who has been convicted of violating the Buy American Act.
- (c) Under this section, “Infrastructure Project” has the definition provided in 2 C.F.R. 184.3.
- (d) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

FRA PROGRAM SPECIFIC TERMS AND CONDITIONS – BUY AMERICA

Buy America. In lieu of section 12.1 of this Attachment 1:

- (1) For infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. 22905(a), as implemented by FRA. The Recipient acknowledges that this agreement is neither a waiver of 49 U.S.C. 22905(a)(1) nor a finding under 49 U.S.C. 22905(a)(2). For infrastructure projects, construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (2) For infrastructure projects falling within 1) through 3) of the introductory paragraph above, iron, steel, manufactured products and construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB and USDOT. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (3) For non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. 22905(a), as implemented by FRA. The Recipient acknowledges that this agreement is neither a waiver of 49 U.S.C. 22905(a)(1) nor a finding under 49 U.S.C. 22905(a)(2).
- (4) For non-infrastructure projects falling within 1) through 3) of the introductory paragraph above, the recipient’s acquisition of steel, iron and manufactured goods with funding provided through this Agreement is subject to the requirements set forth in the Buy American Act, 41 U.S.C. §§ 8301-8305. The Grantee also represents that it has never been convicted of violating the Buy American Act nor will it make funding received under this Agreement available to any person or entity who has been convicted of violating the Buy American Act.
- (5) Under this section, “Infrastructure Project” has the definition provided in 2 C.F.R. 184.3.
- (6) For all projects, as appropriate and to the extent consistent with law, the Recipient should under 2 C.F.R. 200.322, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. 200.322 in all subawards including all contracts and purchase orders for work or products under this award.

Part 200

The Buy American Act

Buy America: The Requirements

- FRA may fund a project only if **all** the steel, iron, manufactured products and construction materials are produced in the United States.
- Each item fits one category:
 - Manufactured Products
 - Steel/Iron
 - Construction Materials
- Each category has its own requirements.
- FRA Buy America and BABA apply to items permanently incorporated into the project.
 - Temporary materials are excluded.

Buy America: The Requirements

Manufactured Products

- 100% domestic components
- Subcomponents may be foreign

Steel/Iron

- “structural steel and iron” all metallurgical processes from initial melting to application of coatings must occur in the U.S.

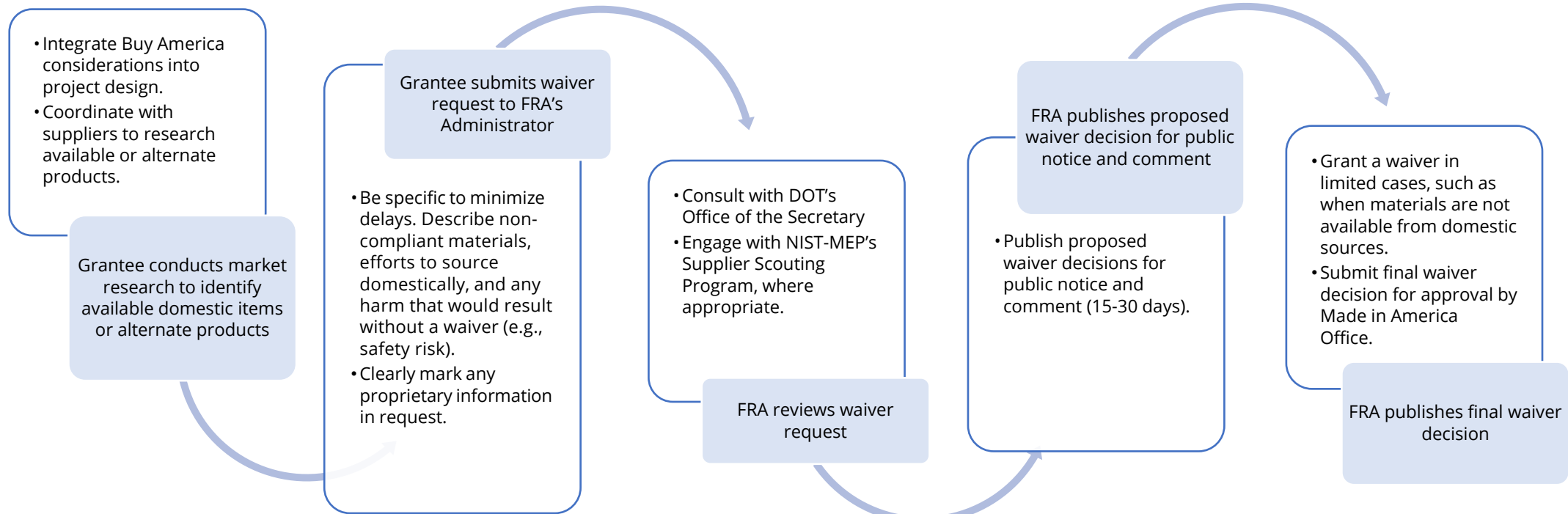
Construction Materials

- All construction materials must be produced in the US
- Refer to the standards in 2 CFR part 184 (specific for each material)

Buy America: The Waiver Process

WAIVER PROCESS

Timeline: 8 – 12 months



Buy America: The Other Things to Know

- DOT has waived Buy America requirements for *de minimis* costs for FRA (88 Fed. Reg. 55817, Aug. 18, 2023). The waiver applies when:
 - The total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs of the Project.
- If the total value of the non-compliant products exceeds the *de minimis* threshold, the grantee cannot apply the *de minimis* waiver, and must seek a waiver for all of the non-compliant products.
- FRA Buy America requirements **are distinct from** FHWA and FTA Buy America requirements.
 - Multimodal projects may have more than one applicable Buy America requirement.

Buy America: The Contacts

- **Grant Questions:**

- Project Manager (RRD) + Regional Attorney (RCC)

- **Policy:**

- Shreyas Bhatnagar (RRD)
- Ryan Arbuckle (RRD)

- **Legal:**

- Faris Mohammed (RCC – Development Law)
- Nathan Keithline (RCC – Development Law)
- John Johnson (RCC – General Law)



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