



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA-2025-0017]

Notice of Proposed Waiver of Buy America Requirements for Tier 0, Tier 1, and Non-Tiered Locomotives

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: The Federal Railroad Administration (FRA) is seeking comments on whether to grant a general applicability public interest waiver of its Buy America requirements for the purchase of used locomotives that would serve as the underframe or chassis to convert them to all-electric, renewable diesel, battery-powered, or other renewable-energy locomotives. Such projects would remove highly polluting locomotives from the national rail network and replace them with more efficient locomotives that will reduce overall emissions, address environmental burdens on communities, and create domestic jobs. Purchases of these locomotives under FRA-funded projects are subject to FRA's Buy America requirements. However, given the age of these used locomotives, it is difficult and may not be possible to verify whether they are fully compliant with FRA's Buy America requirements. In this general applicability waiver, FRA does not propose to waive the applicable Build America, Buy America Act (BABA) requirements. This proposed waiver would not apply to any other manufactured products, steel, iron, or construction materials.

DATES: Comments must be received by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Please submit all comments electronically to the federal rulemaking Portal. Go to <https://www.regulations.gov> and follow the instructions for submitting comments.

Instructions: All submissions must refer to the Federal Railroad Administration and the docket number in this notice (FRA-2025-0017). Note that all submissions received, including any personal information provided, will be posted without change and will be available to the public at <https://www.regulations.gov>. You may review the U.S.

Department of Transportation's (DOT) complete Privacy Act Statement in the Federal Register published April 11, 2000 (65 FR 19477), or at <https://www.transportation.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Shreyas Bhatnagar, Regional Supervisor, Office of Regional Outreach & Project Delivery – South Central Region, Office of Railroad Development, FRA; telephone: (202) 617-0212; email: Shreyas.Bhatnagar@dot.gov. For legal questions, please contact Faris Mohammed, Attorney-Advisor, Office of the Chief Counsel, FRA; telephone: (202) 763-3230; email: Faris.Mohammed@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Stakeholders have expressed concerns to FRA regarding the applicability of FRA's Buy America requirements on used locomotives that are purchased for an FRA-funded project and rehabilitated or remanufactured to meet higher emission standards. The U.S. Environmental Protection Agency (EPA) sets emissions standards for line haul and switch locomotives under different tiers, each of which corresponds to when the locomotive engine was originally manufactured, as follows:

- Tier 0 includes locomotive engines from 1973-1992 (line haul) and 1973-2001 (switch),

- Tier 1 includes locomotive engines from 1993-2004 (line haul) and 2002-2004 (switch),
- Tier 2 includes locomotive engines from 2005-2011 (line haul) and 2005-2010 (switch),
- Tier 3 includes locomotive engines from 2012-2014 (line haul) and 2011-2014 (switch), and
- Tier 4 includes locomotive engines from 2015 or later (line haul and switch).

Locomotives produced before 1973 are classified as non-tiered.

Tier 0 and Tier 1 locomotives have been in operation in the United States for decades, and many of them are still operating on the national rail network. Locomotive manufacturers may purchase these old non-tiered, Tier 0, and Tier 1 locomotives, remove the diesel engine, and replace the engine with an alternative power source, such as an electric motor and battery, which can result in a more efficient, higher-tier locomotive.

The Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law, created historic federal investment opportunities in domestic infrastructure, clean energy manufacturing, and electric vehicles and batteries that have grown clean energy jobs across the country. Although rail transportation is generally considered a more efficient mode of transportation, older locomotives are less efficient than newer, higher-tiered locomotives.

In addition, locomotive emissions from rail yards contribute to poor air quality and other environmental effects for nearby communities. Reducing locomotive emissions in rail yards can help alleviate environmental burdens, including exhaust and noise, and improve the quality of life for these communities.

In the IIJA, Congress amended FRA's Consolidated Rail Infrastructure and Safety Improvements (CRISI) Grant Program to authorize FRA to fund projects for rehabilitating, remanufacturing, procuring, or overhauling locomotives, provided that

such activities result in a significant reduction of emissions. 49 U.S.C. 22907(c)(16). FRA has defined significant reduction of emissions to mean rehabilitating, remanufacturing, procuring, or overhauling: (1) a Non-Tiered, Tier 0, or Tier 1 locomotive to at least the Tier 2 level; (2) a Tier 2 or Tier 3 locomotive to at least a Tier 4 level; or (3) any locomotive to an all-electric, renewable diesel, battery-powered, or other renewable energy locomotive.¹

As such, FRA-funded projects may include the purchase of an older Tier 0, Tier 1, or non-tiered locomotive currently in service for the purpose of rehabilitating or remanufacturing the locomotive, converting it to a higher tier by replacing the diesel engine with an alternative power source. FRA's Buy America requirements apply to FRA's CRISI Grant Program. Therefore, these requirements would apply to the purchase of older locomotives as part of projects to convert them to a higher emissions tier. Although it is possible that Tier 0, Tier 1, and non-tiered locomotives that have been in operation in the United States for decades may be compliant with FRA's Buy America requirements, due to their age it is difficult for grant recipients to verify that all of the components used in the locomotive were produced in the United States. Although a grant recipient may be able to confirm that the locomotive was assembled in the United States, documentation verifying the country of origin of the locomotive's components is typically unavailable due to the passage of time.

FRA proposes to issue this general applicability waiver of its Buy America requirements for FRA-funded projects that involve the purchase of these used locomotives for the purpose of rehabilitating, remanufacturing, or overhauling the used locomotive to deliver a locomotive with significantly reduced emissions. FRA is not proposing to waive its Buy America requirements for any other manufactured products,

¹ See Notice of Funding Opportunity for the FY 2023-2024 Consolidated Rail Infrastructure and Safety Improvements Grant Program, 89 FR 22206 (March 29, 2024).

steel, iron, or construction materials used in FRA-funded projects, nor does this waiver apply to the purchase of any new items necessary for the project, such as the battery system and its components. This general applicability waiver will facilitate the delivery of innovative locomotive projects that seek to develop and deploy alternative power sources to produce more efficient locomotives, reduce locomotive emissions throughout the country, address environmental burdens on communities, and create domestic jobs.

This notice summarizes FRA's Buy America requirements and FRA's proposed waiver. FRA also seeks comments as to whether it should consider issuing a waiver for any other products required to manufacture locomotive batteries or locomotive charging stations and equipment due to the domestic nonavailability of such products. Should it obtain such information, FRA will consider proposing additional nonavailability waivers as appropriate.

II. FRA's Buy America Requirements and Policy

Projects that receive funding under the CRISI Grant Program are subject to FRA's Buy America requirements. This means that FRA can fund a project "only if the steel, iron, and manufactured goods used in the project are produced in the United States" (49 U.S.C. 22905(a)). In addition, FRA-funded projects must also comply with the relevant provisions of BABA, specifically the requirement that all construction materials used in the project must also be produced in the United States (Pub. L. 117-58, sec. 70914(a)).

FRA strictly enforces compliance with Buy America to ensure that FRA-funded projects use materials produced in the United States. FRA expects grantees to work with suppliers to conduct thorough market research and adequately consider, where appropriate, using qualifying alternate items, products, or materials. Compliance with FRA's Buy America requirement supports domestic industry and well-paying jobs.

III. FRA's Authority to Waive Buy America Requirements

FRA can waive its Buy America requirements in limited circumstances. FRA will grant a waiver that is consistent with the statutory criteria.

FRA may waive its Buy America requirements if FRA determines that applying the Buy America requirements would be inconsistent with the public interest; the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of satisfactory quality; rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or including domestic material would increase the cost of the overall project by more than 25 percent (49 U.S.C. 22905(a)(2); *see also* Pub. L. 117-58, sec. 70914(b); prescribing similar statutory conditions for waivers).

FRA may issue a general applicability waiver when doing so is necessary to advance the agency's mission and goals. This waiver would apply generally across FRA's grant programs.² In addition, a waiver in the public interest is appropriate when the agency determines that other important policy goals cannot be achieved consistent with FRA's Buy America requirements and the Buy America requirements established by BABA, and the proposed waiver does not meet the requirements for a non-availability or unreasonable cost waiver.³

If FRA determines a waiver is appropriate, FRA will provide notice and seek comment from the public.

IV. Proposed Waiver

FRA has determined that applying its Buy America requirements to the purchase of Tier 0, Tier 1, and non-tiered locomotives for the purpose of rehabilitating or remanufacturing the locomotive to significantly reduce emissions would be inconsistent with the public interest as it would be overly burdensome or, in some instances, not

² *See* Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, M-24-02, at p. 13 (Oct. 25, 2023).

³ *Id.*, at p. 11.

possible to verify whether the used locomotive is fully compliant with FRA's Buy America requirements. To advance rail projects that deploy more efficient locomotives, reduce emissions, address environmental burdens on communities, and create domestic jobs, FRA proposes to waive its Buy America requirements for the purchase of used Tier 0, Tier 1, and non-tiered locomotives, provided that the used locomotive:

- has been in continuous service in the United States from the date of manufacture;
- was not purchased outside the United States;
- was manufactured prior to 2004 (line haul or switch); and
- will be used in an FRA-funded project that will result in a significant reduction in emissions.

The proposed waiver does not apply to any other manufactured products, steel, or iron used in the FRA-funded project, nor does it apply to the purchase of any new items necessary for the project, such as the battery system and its components. FRA is not proposing to waive any applicable BABA requirements, and the proposed waiver does not apply to any construction materials.

The proposed waiver would be effective for five years from the date the final waiver is issued and would apply to awards obligated within that period.

V. Request for Comment

FRA will consider comments received during the 15-day public comment period. FRA may consider comments received after this period to the extent practicable. Consistent with 49 U.S.C. 22905(a)(4), following the public comment period, if FRA determines it is necessary to waive its Buy America requirements, FRA will publish its decision in the Federal Register and provide an opportunity for public comment on such finding for a reasonable period not to exceed 15 days. After such a period, FRA's decision will be effective.

FRA also seeks input from the public as to whether it should consider issuing a separate waiver for any other products required to manufacture locomotive batteries or locomotive charging stations and equipment due to their nonavailability in the domestic market.

Issued in Washington D.C.

Amitabha Bose,

Administrator.

[FR Doc. 2025-00443 Filed: 1/10/2025 8:45 am; Publication Date: 1/13/2025]