



Bridgeport Fittings Summary Interpretation Comments: American Recovery and Reinvestment Act of 2009 Buy American Act

Buy American Commentary

The interpretation comments provided herein are solely based on Bridgeport's research pertaining to the American Recovery and Reinvestment Act (ARRA) of 2009 and the Buy American Act. Every attempt has been made to accurately portray the information herein but please be advised the following is our interpretation of the various acts. The actual ARRA and Buy American Act should be consulted for accuracy and fact; ultimately this documents and those individuals responsible for implementing requirements have the final say as to what is permitted and what is not permitted.

This document covers the **BUY AMERICAN** commentary; there are three commentary sections available:

- **General:** This section highlights the ARRA and Buy American Act
- **Buy American:** Pertains to the requirement to Buy American and Construction Materials
- **Zinc as an Acceptable Material:** Dialogues Federal Specification Acceptance of Zinc

BUY AMERICAN

Both the ARRA and Buy American Act are very specific when it comes to purchasing/using construction materials funded by the government. These acts require product to be manufactured in the U.S. There are exceptions within each act that allow "foreign" products to be used in construction projects provided the subject product falls within one or more of the stated exceptions. The following is a summary discussion of each; please refer to the specific government documentation for a complete reference.

The **ARRA of 2009** contains a single, but important reference to Buy American (see web link above – Section 1605). The following are two references pertaining to the Buy American provision of the ARRA of 2009:

- The Memorandum from the Executive Office of the President, M-09-15 dated April 3, 2009, "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009", provides clarification to Buy American and the guidelines that are to be used for ARRA funded projects. Reference link:
<http://www.recovery.gov/sites/default/files/m09-15.pdf>



- Buy American Requirements for Construction Material OCPO Regulatory Advisory 09-16, dated April 1, 2009, FAC 2005-32/FAR Case 2009-008: American Recovery and Reinvestment Act of 2009. Note: Interim rule outlines the implementation of the Buy American provision, section 1605, of the ARRA of 2009.
http://www.dhs.gov/xlibrary/assets/opnbiz/FAR_recovery_advisory_buy_american_040109.pdf

By inference, the Interim rule supersedes the original Buy American Act as it applies to the use of ARRA funded projects. These two references clearly state the requirement for product to be manufactured in the U.S. and prohibit the use of ARRA funds from being used to purchase foreign manufactured product. There are exceptions that are permitted (see extracted quote for the OCPO Regulatory Advisory 09-16 referenced above) including a requirement to conform to U.S. obligations under international agreements (Free Trade Agreements and the WTO Agreements as they may apply).

- *“The Contracting Officer may allow incorporation of foreign construction materials on the basis of three exceptions.*
 - *Iron, steel, or manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities and of satisfactory quality. The head of the contracting activity must make this determination*
 - *Inclusion of U.S. iron, steel, and manufactured goods will increase the cost of the project by more than 25%: or*
 - *Applying the domestic preference would be inconsistent with the public interest. The head of the agency must make this determination.”*

The **Buy American Act** contains similar criteria to the use of U.S. funds as they pertain to construction materials. The following are two references from the Buy American Act:

- Part 25 Scope of Part [25.001(a) The Buy American Act]
http://www.acquisition.gov/far/current/html/Subpart%2025_1.html
- Subpart 25.2 – Buy American Act – Construction Materials
http://www.arnet.gov/far/current/html/Subpart%2025_2.html

The Subpart 25.2, specific section reference 25.202 Exceptions, outline the several exceptions that may apply to the Buy American provision of this Act (see extracted paraphrased quote from this section):

Both the **ARRA and Buy American Act** have provisions for waiving the requirement to buy American manufactured products in favor of foreign manufactured products if **Free Trade Agreements or WTO agreements** are in place with a specific country. The U.S. Government will honor its Free Trade Agreements regarding projects funded with ARRA funding. An example of a country with a Free Trade Agreement with the U.S. is **Canada**.



State and Local governments are also obligated to conform to certain International Agreements. Reference document web link from Appendix 9 – Interim Final Guidance for Federal Financial Assistance, pages 157 to 168:

- “Appendix - to Subpart B of 2 CFR part 176 – U.S. States, Other Sub-Federal Entities, and Other Entities Subject to U.S. Obligations under International Agreements,”

<http://www.recovery.gov/sites/default/files/m09-15.pdf>