



FRA Buy America and Related Requirements





Overview

Purpose

- Support FRA grantees and partners with **technical assistance** in understanding and complying with the Buy America requirements and other Federal legislation.
- Present examples of **real-world applications** of how Buy America requirements can be applied.





Overview

Agenda

- **Understanding and Applying FRA Buy America Requirements**
- **Questions?**





Understanding and Applying FRA Buy America Requirements

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FRA Buy America Questions???

email:

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Understanding and Applying FRA Buy America Requirements

Sourcing Domestically is the BEST Option for Grantees

FRA believes that passenger rail equipment can and should be manufactured in the United States

- **This includes railcars AND rail infrastructure construction materials**

FRA will ensure that grant funds are spent domestically whenever possible

- **Where not currently a domestic source, FRA will do what it can to encourage domestic production**

Buy America requirements aid and encourage the domestic rail market

- **Benefits the U.S. economy and all Americans**





Understanding and Applying FRA Buy America: Three Sets of Requirements

Three Statutes Potentially Apply

Statute	U.S.C. Citation	Applicable Programs & Projects
Buy America; Build Buy America	49 U.S.C. § 22905(a) & Pub. L. 117-58	<ul style="list-style-type: none">• FRA's discretionary grant programs• Certain DOT programs (RRIF, MEGA)
Amtrak Domestic Spending Preference	49 U.S.C. § 24305(f)	<ul style="list-style-type: none">• Amtrak capital grants
The Buy American Act	41 U.S.C. § 8302 et seq. (formerly § 10a-10c)	<ul style="list-style-type: none">• Rail Line Relocation projects• FY 2008 Capital Assistance to States grants• FY 2009 HSIPR projects

Requirements attach to the grant funding source for each project element (check grant agreement and follow the money!)

- **Keep your sub-grantees, contractors and suppliers informed**
- **Include flow-down provisions in procurement documents and contracts**
- **Contact FRA early if you have questions**





Understanding and Applying FRA Buy America: Waivers Overview

FRA Can Grant Waivers Only After Thorough Review

Do not expect a waiver

- Waiver request process is 6 months to 1 year
- Strict scrutiny applied
- All waiver recommendations reviewed by DOT Secretary
- FTA 60%+ U.S. content by cost exception does not apply

Waivers are always on a case-by-case basis

- Waivers are project-specific, time-limited, and contingent upon grantee/vendor efforts to find domestic sources
- Before granting a waiver, FRA expects requester to have used best efforts to find domestic sources
- FRA will independently verify assertions made in waiver requests





Understanding and Applying FRA Buy America: Demonstrating Compliance

Demonstrating Compliance

What do grantees need to do?

- Include notice of requirements in solicitations and RFPs
- Include flow-down requirements in contracts
- Maintain certifications for all procurements
- Actively look for fraud and mistakes
- Audit rolling stock procurements

Simple format for certification of FRA Buy America compliance:

The bidder or offeror hereby certifies that it will comply with the FRA Buy America requirements of 49 U.S.C. Section 22905(a)(1).

Date _____
Signature _____
Company _____
Name _____
Title _____





Understanding and Applying FRA Buy America: FRA Requirements

PRIIA Buy America Requirements (49 U.S.C. §22905(a))

Applies to FRA-authorized projects with costs exceeding \$100,000

- **Buy America requirements also apply to items purchased with non-grant funds if used in a grant-funded project.**

Applies to three major categories

- **Manufactured end products and components**
- **Steel and iron**
- **Construction Materials**

Applies to utility relocations and used or inventoried items used in an FRA grant-funded project

- **Used or inventoried items must be documented in the same manner as new items**





Understanding and Applying FRA Buy America: FRA Requirements

PRIIA Buy America Requirements (49 U.S.C. §22905(a))

Definitions

- **End products incorporate components at the final assembly location, and are acquired ready to provide the intended end function without further manufacturing or assembly**
- **Components are directly incorporated into end products at the final assembly location**
- **Subcomponents are one step removed from a component in the manufacturing process – they are incorporated into components during manufacturing**





Understanding and Applying FRA Buy America: FRA Requirements

FRA Buy America Requirements (49 U.S.C. §22905(a))

Definitions (cont.)

- Manufacturing is the application of processes to *substantially transform* and *add value* to components or subcomponents, to create a *functionally different* product
 - Exception: the manufacturing process applicable to rolling stock is “final assembly”
- Final assembly is the creation of an end product from individual elements brought together for that purpose through application of manufacturing processes
 - Example: Rolling stock systems and components are assembled to create a new end product: the railcar





Understanding and Applying FRA Buy America: FRA Requirements

PRIIA Buy America Requirements (49 U.S.C. §22905(a))

Steel and iron get special scrutiny

- **Components manufactured or transformed directly from steel or iron should be U.S. steel or iron**
- **Includes rolling stock components and construction material included in infrastructure projects**
- **No Buy America requirements for steel or iron subcomponents**

Applies to all steel and iron, including used material

- **Used steel and iron must be documented like new material**
- **Examples: stamps on items, shipping documents, signed certificates from vendor**





Understanding and Applying FRA Buy America: FRA Requirements

PRIIA Buy America Requirements (49 U.S.C. §22905(a))

Example: Signal System

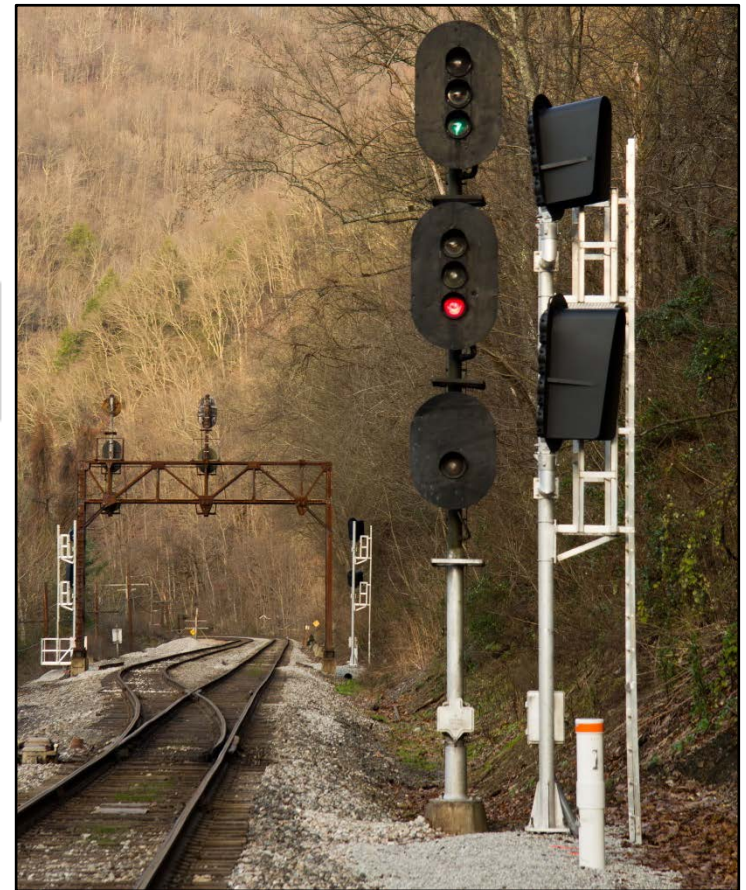
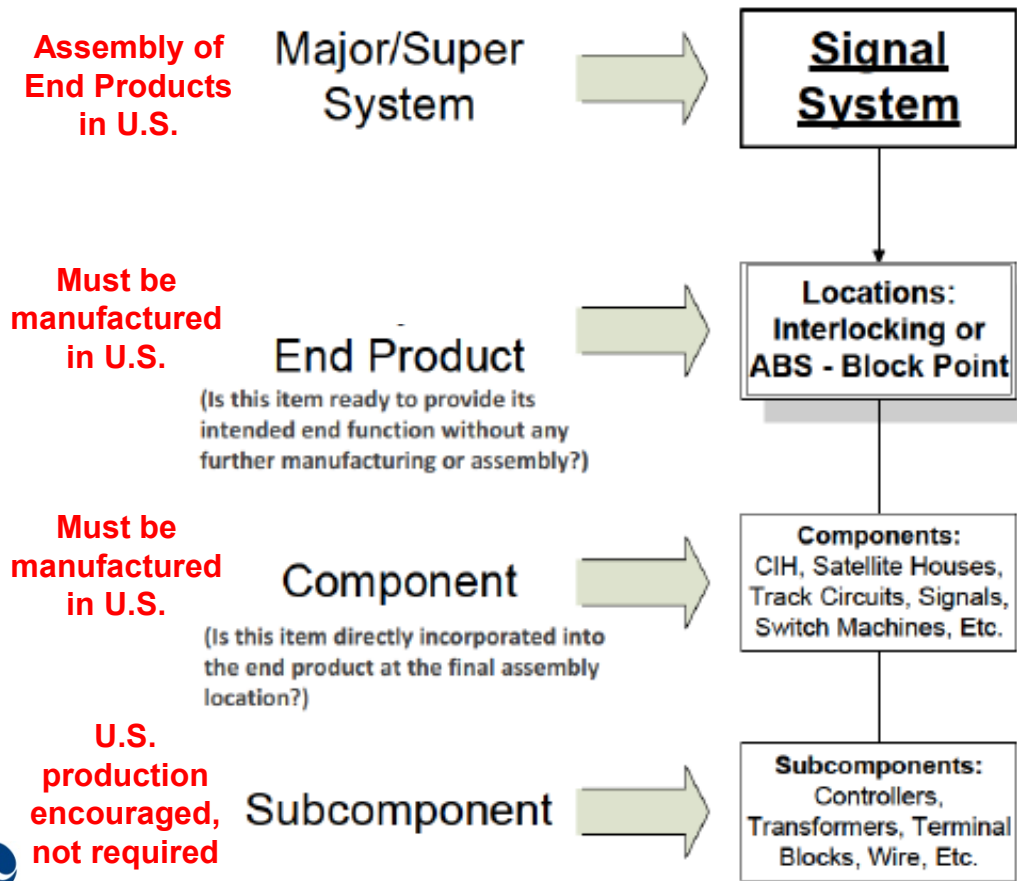


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Understanding and Applying FRA Buy America: FRA Requirements

PRIIA Buy America Requirements (49 U.S.C. §22905(a))

Example: Railroad Turnout Components

- **Turnout is an end product - must be manufactured in U.S.**
- **Turnout components must be manufactured in U.S. (e.g. ties, switch rails, plates, clips, frogs, switches)**
- **Switch rails are turnout components made from steel – must be made from U.S. steel**





Understanding and Applying FRA Buy America: FRA Requirements

PRIIA Buy America Requirements (49 U.S.C. §22905(a))

Example: Railroad Turnout Subcomponents

- Parts making up railroad turnout components are subcomponents and do not have to be manufactured in U.S.
- The vee point pictured below does not have to be manufactured in U.S. because it is a subcomponent of the frog, which is a component of a turnout.
- Need not be U.S. steel because the vee point is a subcomponent.



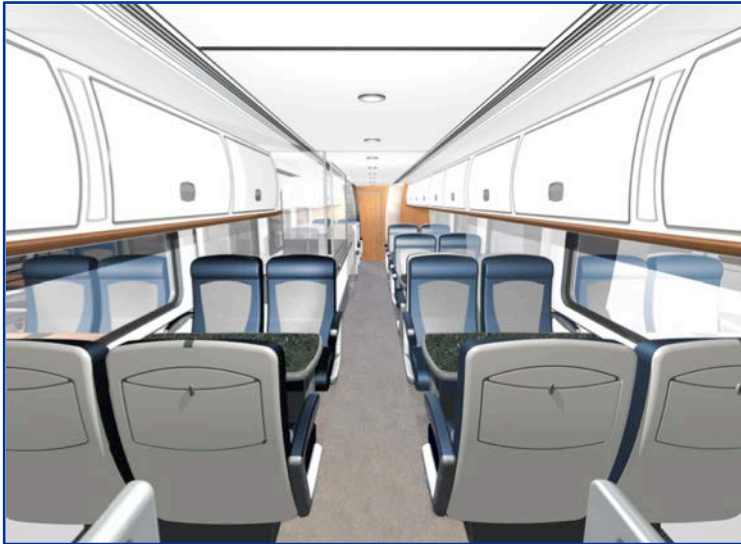


Understanding and Applying FRA Buy America: FRA Requirements

PRIIA Buy America Requirements (49 U.S.C. §22905(a))

Example: Rolling stock

- **Rolling stock final assembly must take place in the U.S.**
- **Railcars consist of multiple systems and components, which must be manufactured in the U.S.**
- **Example Systems: trucks, car shells, main transformers, interior linings, HVAC**



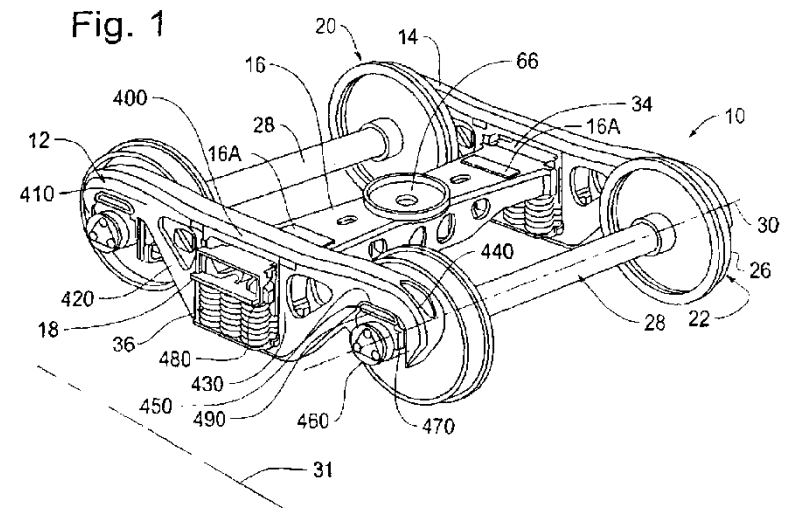


Understanding and Applying FRA Buy America: FRA Requirements

PRIIA Buy America Requirements (49 U.S.C. §22905(a))

Example: Rolling stock system components

- Rolling stock systems and components must also be manufactured in the U.S.
- Example: Trucks are a system included in railcars, with many components (e.g. wheels, axels, axle drivers, shock absorbers). The trucks and these components all must be U.S. manufactured
- Subcomponents need not be manufactured in U.S. (but still recommended)





Understanding and Applying FRA Buy America: FRA, FTA, FHWA Comparison

	FRA	FTA	FHWA
End Products	Final assembly or manufactured in U.S.	Final assembly or manufactured in U.S. Exception for rolling stock assembled in U.S. containing greater than 60% U.S. content by cost.	Products with 90%+ steel or iron content must be U.S.
Systems and Components	<p>All must be manufactured in U.S. Infrastructure materials made primarily of steel or iron must be U.S.</p> <p>Rolling stock systems and components (e.g., couplers, trucks, axles, etc.) made primarily of steel or iron must be produced from U.S steel or iron.</p>	<p>All must be manufactured in U.S. Infrastructure materials made primarily of steel or iron must be U.S.</p> <p>Car shells and other rolling stock parts made of steel are treated as components. Manufacturer of rolling stock may use domestic or foreign steel in those components, but sum of the foreign-manufactured components cannot exceed 40% of vehicle cost.</p>	Products with 90%+ steel or iron content must be U.S.
Sub-Components	No restrictions – U.S. manufacture encouraged	Subcomponents made primarily of steel or iron and used in construction projects must be U.S. produced.	Same as above, but does not apply to hardware used in assembly/enclosure.





Understanding and Applying FRA Buy America: Amtrak Requirements

Amtrak Domestic Buying Preference (49 USC § 24305(f))

Applies to Amtrak capital grants, for items purchased in excess of \$1,000,000

- **Requires Amtrak to buy articles, materials and supplies manufactured in the U.S., that are substantially made from U.S. source materials (50 percent or more by cost)**

FRA Buy America (49 USC §22905(a)) applies when Amtrak is operating under a FRA-authorized grant or performing a contract for another grantee

- **Check your grant for funding source**
- **Call FRA for assistance**





Understanding and Applying FRA Buy America: The Buy American Act

The Buy American Act 41 USC § 8302 et seq. (formerly 41 USC § 10a-10c)

Applies to legacy FRA grants

- Fiscal year 2008-09 appropriations
- Certain rail relocation grants

Similar to Amtrak domestic buying preference except:

- Applies to contracts over \$3,000
- International agreements may apply





Understanding and Applying FRA Buy America: The Buy American Act

Comparing FRA Buy America with FRA Buy American

In general, Buy American imposes fewer restrictions

- **Buy American Act:**
 - Applies only to items included in contracts over \$3,000
 - Waiver can be justified if cost of using domestic material would increase the cost of the contract by more than 6%
- **FRA Buy America:**
 - Applies to projects over \$100,000
 - Waiver justification requires an increase of 25% in total project costs



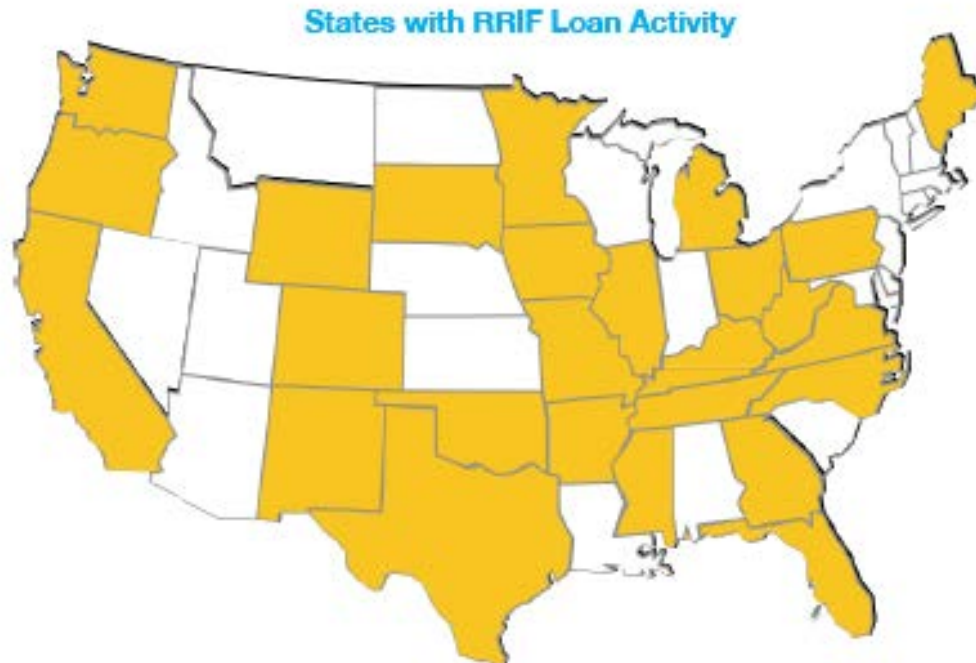


Understanding and Applying FRA Buy America: RRIF

Applicability to Railroad Rehabilitation and Improvement Financing (RRIF) Loans

FRA intent is to apply FRA Buy America standards to RRIF loan applications

- No statutory requirement, but FRA expects FRA Buy America compliance from RRIF loan recipients





Understanding and Applying FRA Buy America: Waivers

Do Not Expect a Waiver

Buy America (FRA) Waivers can only be granted if one of the following apply

1. Enforcing Buy America requirements would be inconsistent with U.S. public interest
2. U.S. goods are not produced in sufficient quantity or quality to meet project needs
3. U.S. rolling stock or power train equipment cannot be delivered within a reasonable time
4. Domestic material will increase the cost of the overall project by more than 25 percent

Waivers are always a case-by-case evaluation – no blanket approvals for specific products or grantees

- Waiver approval process must be followed in every case





Understanding and Applying FRA Buy America: Waivers

Similar waiver justifications for Buy American and Amtrak domestic spending requirements

- **Less stringent in most cases**
- **FRA uses same process for all**

FRA cannot grant exception for rolling stock with 60% U.S. content and U.S. assembly (FTA Only)

- **FTA's Buy America statute (49 U.S.C. § 5323(j)) allows exception for rolling stock assembled in the U.S. with 60%+ U.S. content by cost.**
- **FRA Buy America statute does NOT allow for this type of exception.**





Understanding and Applying FRA Buy America: Waivers

Waiver Application Process Takes Six Months or More

Contact FRA to determine if a waiver is required, then:

1. Grantee State DOT applies by submitting letter to FRA Administrator
 - Be specific to minimize delays. Refer to [FRA Buy America FAQs](#) for needed details.
2. All waiver requests posted on [FRA Buy America website](#)
 - Public comments collected via website
 - Proprietary information can be redacted before posting
3. FRA will reach out to manufacturers directly, or through NIST-MEP.

DOT takes each decision very seriously

- Most decisions reviewed by DOT Deputy Secretary





Understanding and Applying FRA Buy America: NIST-MEP

NIST-MEP

FRA consults with the National Institute of Technology and Standards (NIST)

- NIST-MEP may scout for available domestic products on behalf of FRA, or directly for grantees



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EXTENSION PARTNERSHIP

NATIONAL INSTITUTE OF
STANDARDS AND TECHNOLOGY

U.S. DEPARTMENT OF COMMERCE





Understanding and Applying FRA Buy America Requirements

Conclusion

Using domestic sources is the **best** option for grantees and benefits all Americans

Do **not** expect a waiver

Requirements attach to the funding source – **check** your grant agreement to see which statute applies

Refer to FRA guidance and ask for assistance **early** in the process





Questions & Answers

FRA Buy America Questions???

email:

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Thank You!

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