

2015 FRA
Rail Program Delivery



FRA Buy America and Related Requirements

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Understanding and Applying FRA Buy America: Three Sets of Requirements

Statute	U.S.C. Citation	Applicable Programs & Projects
Buy America (PRIIA)	49 U.S.C. § 24405(a)	<ul style="list-style-type: none"> • PRIIA-authorized projects (FY 2010+ HSIPR appropriations and ARRA) • RRIF and TIGER
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 • 2015 Crude Oil grants
Amtrak Domestic Buying Preference	49 U.S.C. § 24305(f)	<ul style="list-style-type: none"> • Amtrak capital grants

- 49 U.S.C. 24405(a) applies to PRIIA / HSIPR and RRIF Projects.
- The Federal Transit Administration (FTA) or Federal Highway Administration (FHWA) requirements NEVER apply to FRA projects, though FRA does use some FTA regulation and guidance as guidance for FRA grantees.
- Today's training will focus on 49 U.S.C. 24405(a) requirement and the Buy American Act.

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

	FRA (PRIIA and RRIF)	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	<p>Subcomponents in rolling stock counted toward content by cost.</p> <p>No restrictions on subcomponents in other manufactured products</p>	Same as above, but does not apply to hardware used in assembly/enclosure.

Understanding and Applying FRA Buy America: PRIIA Requirements

Applies to PRIIA-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 two major categories

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

Understanding and Applying FRA Buy America: PRIA Requirements

Definitions

- **End products** incorporate components at the final assembly location, and are 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: PRIIA Requirements

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: PRIA Requirements

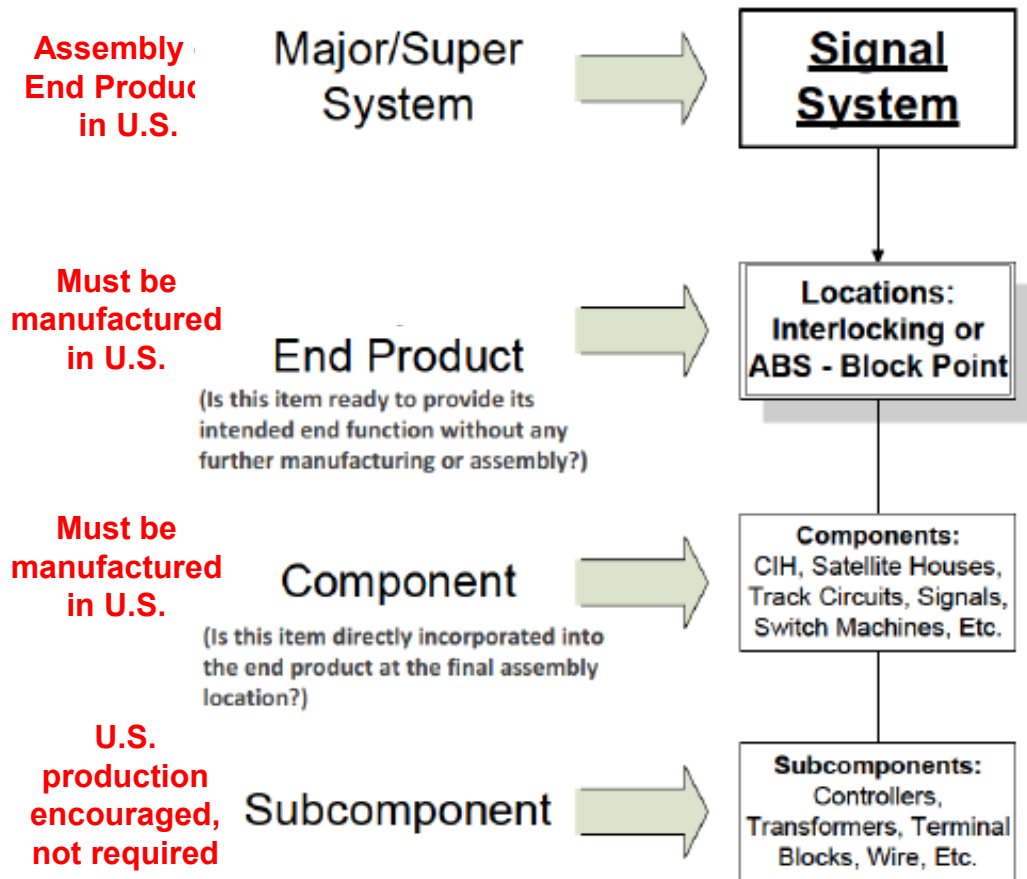
Steel and iron get special scrutiny

- **End products or components made primarily of and/or transformed directly from steel or iron must contain domestically-produced steel or iron:**
 - **Railcar systems and components, including items such as steel car shells, wheels, couplers, trucks, axles, piping, battery boxes, enclosures, mounting racks, and grab irons.**
 - **Structural construction materials, including items such as steel or iron beams and columns, and bridge trusses.**
 - **Steel track work used in track projects, including items such as running rail, contact rail, switch rails, and turnouts.**
- **No Buy America requirements for steel or iron subcomponents**
 - **Whether classified by FRA as a component or subcomponent in a particular project, steel or iron connectors and fasteners, which because of their small size contain only a minimal quantity of steel or iron, do not need to be comprised of U.S.-manufactured steel.**

Applies to all steel and iron, including used or recycled material.

Understanding and Applying FRA Buy America: PRIA Requirements

Example: Signal System



Understanding and Applying FRA Buy America: PRIA Requirements

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: PRIA Requirements

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**
- **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: PRIIA Requirements

- Applies to utility relocations, whether or not federal funds are actually used.
 - Limited exception where Grantee
 - 1) not responsible for the costs of the steel, iron, or manufactured good used in utility relocations; AND
 - 2) could not, because of an existing statute or agreement, include Buy America provisions in anticipated contracts or agreements to make other parties responsible for applying Buy America requirements,

Those costs may be deemed as not within the scope of the FRA “project” and Buy America need not be applied.

- Applies to inventoried items used in an FRA grant-funded project.
- FRA follows analysis similar to FTA when determining requirements for utility relocations.
- However, FRA does not follow all of FTA Buy America rules (e.g., small purchase exemption) and therefore grantees and utilities are highly encouraged to contact FRA with specific questions.
- FRA is available to work with grantees and utilities to develop lists of end products, components, and subcomponents similar to those developed by FTA.

Understanding and Applying FRA Buy America: PRIA Requirements

What do grantees need to do?

- **Ensure that the design, detailing, and specification of materials and manufactured end products and components are done with domestic sourcing in mind.**
- **Include notices of the requirements and references to the applicable statutes and regulations in solicitations and requests for proposals (RFPs).**
- **Review proposals and verify that each iron, steel or manufactured product will meet one of the following conditions:**
 - **Will be/have been manufactured in the United States; or**
 - **A waiver exists or will likely qualify for a waiver to cover the non-domestic product.**
- **Obtain signed certifications from suppliers and contractors.**

Understanding and Applying FRA Buy America: PRIA Requirements

What do grantees need to do? (continued)

- **Include provisions in all procurement contracts to ensure that the applicable statutory requirements flow down to suppliers, contractors, and sub-contractors.**
- **After the award, confirm that contractors and manufacturers understand they are responsible for complying with Buy America/n, and evaluate whether they are capable of complying.**
- **If warranted, inspect manufacturer's facilities to verify domestic sourcing (e.g. rolling stock).**

Understanding and Applying FRA Buy America: PRIIA Requirements

What do grantees need to do? (continued)

Sample format for certification of PRIIA 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 24405(a)(1).

Date _____
Signature _____
Company _____
Name _____
Title _____

Sample format for certification of PRIIA Buy America non-compliance:

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 24405(a)(1), but it may qualify for a waiver from the requirement pursuant to 49 U.S.C. Section 24405(a)(2). The bidder or offeror also certifies that it has attached evidence it believes would qualify it for a waiver from Section 24405(a)(1) for one or more of the reasons set forth in Section 24405(a)(2)..

Date _____
Signature _____
Company _____
Name _____
Title _____

Understanding and Applying FRA Buy America: Waivers

Buy America (PRIIA) 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; and/or**
- 4. Domestic material will increase the cost of the overall project by more than 25 percent**

Understanding and Applying FRA Buy America: Waivers

FRA Can Grant Waivers Only After Thorough Review

Do not expect a waiver

- **Waiver request process is 3 months to 1 year**
- **Strict scrutiny applied**
- **Waivers reviewed by DOT Secretary's Office**
- **FTA 60%+ U.S. content by cost exception does not apply**

Waivers are always on a case-by-case basis

- **Waivers are project-specific and time-limited**
- **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 through NIST-MEP**

Understanding and Applying FRA Buy America: Waivers

FRA participates in an interagency agreement 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**



**MEP • MANUFACTURING
EXTENSION PARTNERSHIP**

NATIONAL INSTITUTE OF
STANDARDS AND TECHNOLOGY

U.S. DEPARTMENT OF COMMERCE

Contacts:

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- **David Stieren (David.Stieren@nist.gov, 301-975-3197)**

Understanding and Applying FRA Buy America: Waivers

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

- 1. Usually grantee applies by submitting letter to FRA Administrator**
 - Be specific to minimize delays. Refer to FRA Buy America FAQs website for needed details.**
- 2. All waiver requests are posted on FRA Buy America website**
 - Public comments collected via website and Federal Register Notices**
 - Proprietary information can be redacted before posting**

Understanding and Applying FRA Buy America: The Buy Americanu Act

- **41 USC § 8302 et seq. (formerly 41 USC § 10a-10c)**
- **FRA uses the Buy American Act regulation as guidance (48 CFR Part 25).**
- **Grantees must purchase “only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States....”**
- **Buy American Act applies to FRA grants made under non-PRIIA authorized spending, such as Transportation Appropriations 2008 and 2009, certain rail line relocation grants, and crude oil grants.**
- **Applies to all purchases over \$3,000.**
- **International agreements may apply.**

Understanding and Applying FRA Buy America: Amtrak Requirement

Applies to all Amtrak purchases:

- **Requires Amtrak to buy**
 - **manufactured articles, materials and supplies manufactured in the U.S., that are substantially made from U.S. source materials (50 percent or more by cost); and**
 - **unmanufactured articles, material, and supplies mined or produced in the U.S.**
- **FRA uses Buy American Act regulation, 48 CFR Part 25, as guidance.**
- **Applies only when the cost of those articles, material, or supplies bought is at least \$1,000,000**

PRIIA Buy America (49 USC §24405(a)) applies when Amtrak is operating under a PRIIA-authorized grant or performing a contract for another PRIIA grantee



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<https://www.fra.dot.gov/Page/P0185>