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 of PRIIA and other Federal legislation.
- Present examples of **real-world applications** of how Buy America requirements can be applied.
- **Answer questions** from FRA grantees.
Overview

Agenda

- Opening Poll Questions
- Understanding and Applying FRA Buy America Requirements  
  *Linda Martin*
- Questions & Answers
- Feedback Poll Questions
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

<table>
<thead>
<tr>
<th>Statute</th>
<th>U.S.C. Citation</th>
<th>Applicable Programs &amp; Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buy America (PRIIA)</td>
<td>49 U.S.C. § 24405(a)</td>
<td>• PRIIA-authorized projects (FY 2010+ HSIPR appropriations and ARRA)</td>
</tr>
<tr>
<td>Amtrak Domestic Spending</td>
<td>49 U.S.C. § 24305(f)</td>
<td>• Amtrak capital grants</td>
</tr>
<tr>
<td>Preference</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Buy American Act</td>
<td>41 U.S.C. § 8302 et seq.</td>
<td>• Rail Line Relocation projects</td>
</tr>
<tr>
<td>(formerly § 10a-10c)</td>
<td></td>
<td>• FY 2008 Capital Assistance to States grants</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• FY 2009 HSIPR projects</td>
</tr>
</tbody>
</table>

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
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 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___________________________________________________________
PRIIA Buy America Requirements (49 U.S.C. §24405(a))

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

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
PRIIA Buy America Requirements (49 U.S.C. §24405(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.
PRIIA Buy America Requirements (49 U.S.C. §24405(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
PRIIA Buy America Requirements (49 U.S.C. §24405(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
PRIIA Buy America Requirements (49 U.S.C. §24405(a))

Example: Signal System

Assembly of End Products in U.S.

Must be manufactured in U.S.

Must be manufactured in U.S.

U.S. production encouraged, not required
PRIIA Buy America Requirements (49 U.S.C. §24405(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
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**.
PRIIA Buy America Requirements (49 U.S.C. §24405(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
PRIIA Buy America Requirements (49 U.S.C. §24405(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

<table>
<thead>
<tr>
<th></th>
<th>FRA</th>
<th>FTA</th>
<th>FHWA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>End Products</strong></td>
<td>Final assembly or manufactured in U.S.</td>
<td>Final assembly or manufactured in U.S. Exception for rolling stock assembled in U.S. containing greater than 60% U.S. content by cost.</td>
<td>Products with 90%+ steel or iron content must be U.S.</td>
</tr>
<tr>
<td>Systems and Components</td>
<td>All must be manufactured in U.S. Infrastructure materials made primarily of steel or iron must be U.S.</td>
<td>All must be manufactured in U.S. Infrastructure materials made primarily of steel or iron must be U.S.</td>
<td>Products with 90%+ steel or iron content must be U.S.</td>
</tr>
<tr>
<td></td>
<td>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.</td>
<td>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.</td>
<td>Same as above, but does not apply to hardware used in assembly/enclosure.</td>
</tr>
<tr>
<td><strong>Sub-Components</strong></td>
<td>No restrictions – U.S. manufacture encouraged</td>
<td>Subcomponents made primarily of steel or iron and used in construction projects must be U.S. produced.</td>
<td>Same as above, but does not apply to hardware used in assembly/enclosure.</td>
</tr>
</tbody>
</table>
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)

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

- Check your grant for funding source
- Call FRA for assistance
The Buy American Act 41 USC § 8302 et seq. (formerly 41 USC § 10a-10c)

Applies to FRA grants made under non-PRIIA authorized spending

- 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
Comparing FRA Buy America with PRIIA 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%

- **PRIIA Buy America:**
  - Applies to projects over $100,000
  - Waiver justification requires an increase of 25% in total project costs
Applicability to Railroad Rehabilitation and Improvement Financing (RRIF) Loans

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

• No statutory requirement, but FRA expects PRIIA Buy America compliance from RRIF loan recipients
Do Not Expect a Waiver

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
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.
Similar waiver justifications for Buy American (non-PRIIA) 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.
- PRIIA Buy America statute does NOT allow for this type of exception.
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
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

**Contacts:**

- Samm Bowman ([Samm.Bowman@nist.gov](mailto:Samm.Bowman@nist.gov), 301-975-5978)
- David Stieren ([David.Stieren@nist.gov](mailto:David.Stieren@nist.gov), 301-975-3197)
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

Type Your Question into the Chat Pod

The host will read your question aloud and direct it to the presenter
FRA Buy America Resources:

- FRA Buy America Website
- Frequently Asked Questions
- Sign up for email updates

For Questions or Comments:

Linda Martin
FRA Senior Attorney Advisor
linda.martin@dot.gov, (202) 493-6062

Documentation for PDHs:

Download document from pod on the right ------>
or email Kevin McCoy (kevin.mccoy@dot.gov)