

waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

(c) Under the provisions of § 661.7(b) of this part, a general public interest waiver from the Buy America requirements for “small purchases” (as defined in the “common grant rule,” at 49 CFR 18.36(d)) made by FTA grantees with capital, planning, or operating assistance.

[56 FR 932, Jan. 9, 1991, as amended at 60 FR 37928, July 24, 1995, 61 FR 6302, Feb. 16, 1996; 71 FR 14117, Mar. 21, 2006; 72 FR 53697, Sept. 20, 2007; 74 FR 30239, June 25, 2009]

§ 661.9 Application for waivers.

(a) This section sets out the application procedures for obtaining all waivers, except those general exceptions set forth in this part for which individual applications are unnecessary and those covered by 49 U.S.C. 5323(j)(2)(C). The procedures for obtaining an exception covered by 49 U.S.C. 5323(j)(2)(C) are set forth in § 661.11 of this part.

(b) A bidder or offeror who seeks to establish grounds for an exception must seek the exception, in a timely manner, through the grantee.

(c) Except as provided in paragraph (d) of this section, only a grantee may request a waiver. The request must be in writing, include facts and justification to support the waiver, and be submitted to the Administrator through the appropriate Regional Office.

(d) FTA will consider a request for a waiver from a potential bidder, offeror, or supplier only if the waiver is being sought under § 661.7 (f) or (g) of this part.

(e) The Administrator will issue a written determination setting forth the reasons for granting or denying the exception request. Each request for an exception, and FTA’s action on the request, are available for public inspection under the provisions of 49 CFR part 601, subpart C.

[56 FR 932, Jan. 9, 1991, as amended at 71 FR 14117, Mar. 21, 2006; 72 FR 53697, Sept. 20, 2007]

§ 661.11 Rolling stock procurements.

(a) The provisions of § 661.5 do not apply to the procurement of buses and other rolling stock (including train control, communication, and traction power equipment), if the cost of components produced in the United States is

more than 60 percent of the cost of all components and final assembly takes place in the United States.

(b) The domestic content requirements in paragraph (a) of this section also apply to the domestic content requirements for components set forth in paragraphs (i), (j), and (l) of this section.

(c) A component is any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an end product at the final assembly location.

(d) A component may be manufactured at the final assembly location if the manufacturing process to produce the component is an activity separate and distinct from the final assembly of the end product.

(e) A component is considered to be manufactured if there are sufficient activities taking place to advance the value or improve the condition of the subcomponents of that component; that is, if the subcomponents have been substantially transformed or merged into a new and functionally different article.

(f) Except as provided in paragraph (k) of this section, a subcomponent is any article, material, or supply, whether manufactured or unmanufactured, that is one step removed from a component (as defined in paragraph (c) of this section) in the manufacturing process and that is incorporated directly into a component.

(g) For a component to be of domestic origin, more than 60 percent of the subcomponents of that component, by cost, must be of domestic origin, and the manufacture of the component must take place in the United States. If, under the terms of this part, a component is determined to be of domestic origin, its entire cost may be used in calculating the cost of domestic content of an end product.

(h) A subcomponent is of domestic origin if it is manufactured in the United States.

(i) If a subcomponent manufactured in the United States is exported for inclusion in a component that is manufactured outside the United States and it receives tariff exemptions under the procedures set forth in 19 CFR 10.11

§661.11

49 CFR Ch. VI (10-1-11 Edition)

through 10.24, the subcomponent retains its domestic identity and can be included in the calculation of the domestic content of an end product even if such a subcomponent represents less than 60 percent of the cost of a particular component.

(j) If a subcomponent manufactured in the United States is exported for inclusion in a component manufactured outside the United States and it does not receive tariff exemption under the procedures set forth in 19 CFR 10.11 through 10.24, the subcomponent loses its domestic identity and cannot be included in the calculation of the domestic content of an end product.

(k) Raw materials produced in the United States and then exported for incorporation into a component are not considered to be a subcomponent for the purpose of calculating domestic content. The value of such raw materials is to be included in the cost of the foreign component.

(l) If a component is manufactured in the United States, but contains less than 60 percent domestic subcomponents, by cost, the cost of the domestic subcomponents and the cost of manufacturing the component may be included in the calculation of the domestic content of the end product.

(m) For purposes of this section, except as provided in paragraph (o) of this section:

(1) The cost of a component or a subcomponent is the price that a bidder or offeror must pay to a subcontractor or supplier for that component or subcomponent. Transportation costs to the final assembly location must be included in calculating the cost of foreign components and subcomponents.

(2) If a component or subcomponent is manufactured by the bidder or offeror, the cost of the component is the cost of labor and materials incorporated into the component or subcomponent, an allowance for profit, and the administrative and overhead costs attributable to that component or subcomponent under normal accounting principles.

(n) The cost of a component of foreign origin is set using the foreign exchange rate at the time the bidder or offeror executes the appropriate Buy America certificate.

(o) The cost of a subcomponent that retains its domestic identity consistent with paragraph (j) of this section shall be the cost of the subcomponent when last purchased, f.o.b. United States port of exportation or point of border crossing as set out in the invoice and entry papers or, if no purchase was made, the value of the subcomponent at the time of its shipment for exportation, f.o.b. United States port of exportation or point of border crossing as set out in the invoice and entry papers.

(p) In accordance with 49 U.S.C. 5323(j), labor costs involved in final assembly shall not be included in calculating component costs.

(q) The actual cost, not the bid price, of a component is to be considered in calculating domestic content.

(r) Final assembly is the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes. If a system is being procured as the end product by the grantee, the installation of the system qualifies as final assembly.

(s) [Reserved]

(t) Train control equipment includes, but is not limited to, the following equipment:

- (1) Mimic board in central control
- (2) Dispatcher's console
- (3) Local control panels
- (4) Station (way side) block control relay cabinets
- (5) Terminal dispatcher machines
- (6) Cable/cable trays
- (7) Switch machines
- (8) Way side signals
- (9) Impedance bonds
- (10) Relay rack bungalows
- (11) Central computer control
- (12) Brake equipment
- (13) Brake systems
- (14) Cab Signaling;
- (15) ATO Equipment;
- (16) ATP Equipment;
- (17) Wayside Transponders;
- (18) Trip Stop Equipment;
- (19) Wayside Magnets;
- (20) Speed Measuring Devices;
- (21) Car Axle Counters;
- (22) Communication Based Train Control (CBTC).

(u) Communication equipment includes, but is not limited to, the following equipment:

Federal Transit Admin., DOT

§ 661.11

- (1) Radios
- (2) Space station transmitter and receivers
- (3) Vehicular and hand-held radios
- (4) PABX telephone switching equipment
- (5) PABX telephone instruments
- (6) Public address amplifiers
- (7) Public address speakers
- (8) Cable transmission system cable
- (9) Cable transmission system multiplex equipment
- (10) Communication console at central control
- (11) Uninterruptible power supply inverters/rectifiers
- (12) Uninterruptible power supply batteries
- (13) Data transmission system central processors
- (14) Data transmission system remote terminals
- (15) Line printers for data transmission system
- (16) Communication system monitor test panel
- (17) Security console at central control
- (18) Antennas;
- (19) Wireless Telemetry Equipment;
- (20) Passenger Information Displays;
- (21) Communications Control Units;
- (22) Communication Control Heads;
- (23) Wireless Intercar Transceivers;
- (24) Multiplexers;
- (25) SCADA Systems;
- (26) LED Arrays;
- (27) Screen Displays such as LEDs and LCDs for communication systems;
- (28) Fiber-optic transmission equipment;
- (29) Fiber-optic transmission equipment;
- (30) Frame or cell based multiplexing equipment; 13) Communication system network elements.
- (v) Traction power equipment includes, but is not limited to the following:
 - (1) Primary AC switch gear
 - (2) Primary AC transformer rectifiers
 - (3) DC switch gear
 - (4) Traction power console and CRT display system at central control
 - (5) Bus ducts with buses (AC and DC)
 - (6) Batteries
 - (7) Traction power rectifier assemblies
 - (8) Distribution panels (AC and DC)

- (9) Facility step-down transformers
- (10) Motor control centers (facility use only)
- (11) Battery chargers
- (12) Supervisory control panel
- (13) Annunciator panels
- (14) Low voltage facility distribution switch board
- (15) DC connect switches
- (16) Negative bus boxes
- (17) Power rail insulators
- (18) Power cables (AC and DC)
- (19) Cable trays
- (20) Instrumentation for traction power equipment
- (21) Connectors, tensioners, and insulators for overhead power wire systems
- (22) Negative drainage boards
- (23) Inverters
- (24) Traction motors
- (25) Propulsion gear boxes
- (26) Third rail pick-up equipment
- (27) Pantographs
- (28) Propulsion Control Systems;
- (29) Surge Arrestors;
- (30) Protective Relaying.
- (31) Bimetallic power rail.
- (w) The power or third rail is not considered traction power equipment and is thus subject to the requirements of 49 U.S.C. 5323(j) and the requirements of § 661.5.
- (x) A bidder on a contract for an item covered by 49 U.S.C. 5323(j) who will comply with section 165(b)(3) and regulations in this section is not required to follow the application for waiver procedures set out in § 661.9. In lieu of these procedures, the bidder must submit the appropriate certificate required by § 661.12.

APPENDIX A TO § 661.11—GENERAL WAIVERS

- (a) The provisions of § 661.11 of this part do not apply when foreign sourced spare parts for buses and other rolling stock (including train control, communication, and traction power equipment) whose total cost is 10 percent or less of the overall project contract cost are being procured as part of the same contract for the major capital item.
- (b) [Reserved]

APPENDIX B TO § 661.11—TYPICAL COMPONENTS OF BUSES

The following is a list of items that typically would be considered components of a bus. This list is not all-inclusive.
Car body shells, engines, transmissions, front axle assemblies, rear axle assemblies,

§ 661.12

49 CFR Ch. VI (10–1–11 Edition)

drive shaft assemblies, front suspension assemblies, rear suspension assemblies, air compressor and pneumatic systems, generator/alternator and electrical systems, steering system assemblies, front and rear air brake assemblies, air conditioning compressor assemblies, air conditioning evaporator/condenser assemblies, heating systems, passenger seats, driver's seat assemblies, window assemblies, entrance and exit door assemblies, door control systems, destination sign assemblies, interior lighting assemblies, front and rear end cap assemblies, front and rear bumper assemblies, specialty steel (structural steel tubing, etc.) aluminum extrusions, aluminum, steel or fiberglass exterior panels, and interior trim, flooring, and floor coverings.

grab rails, destination signs, wheelchair lifts; and road testing, final inspection, repairs and preparation of the vehicles for delivery.

(c) If a manufacturer's final assembly processes do not include all the activities that are typically considered the minimum requirements, it can request a Federal Transit Administration (FTA) determination of compliance. FTA will review these requests on a case-by-case basis to determine compliance with Buy America.

[61 FR 6302, Feb. 16, 1996, as amended at 62 FR 40954, July 31, 1997; 72 FR 53697, Sept. 20, 2007; 72 FR 55103, Sept. 28, 2007; 74 FR 30239, June 25, 2009]

APPENDIX C TO § 661.11—TYPICAL COMPONENTS OF RAIL ROLLING STOCK

§ 661.12 Certification requirement for procurement of buses, other rolling stock and associated equipment.

The following is a list of items that typically would be considered components of rail rolling stock. This list is not all inclusive.

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in § 661.13(b) of this part.

Car shells, engines, main transformer, pantographs, traction motors, propulsion gear boxes, interior linings, acceleration and braking resistors, propulsion controls, low voltage auxiliary power supplies, air conditioning equipment, air brake compressors, brake controls, foundation brake equipment, articulation assemblies, train control systems, window assemblies, communication equipment, lighting, seating, doors, door actuators and controls, wheelchair lifts and ramps to make the vehicle accessible to persons with disabilities, couplers and draft gear, trucks, journal bearings, axles, diagnostic equipment, and third rail pick-up equipment.

Certificate of Compliance with Buy America Rolling Stock Requirements

APPENDIX D TO § 661.11—MINIMUM REQUIREMENTS FOR FINAL ASSEMBLY

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 CFR 661.11.

(a) Rail Cars: In the case of the manufacture of a new rail car, final assembly would typically include, as a minimum, the following operations: installation and interconnection of propulsion control equipment, propulsion cooling equipment, brake equipment, energy sources for auxiliaries and controls, heating and air conditioning, communications equipment, motors, wheels and axles, suspensions and frames; the inspection and verification of all installation and interconnection work; and the in-plant testing of the stationary product to verify all functions.

Date _____
Signature _____
Company _____
Name _____
Title _____

Certificate of Non-Compliance with Buy America Rolling Stock Requirements

(b) Buses: In the case of a new bus, final assembly would typically include, at a minimum, the installation and interconnection of the engine, transmission, axles, including the cooling and braking systems; the installation and interconnection of the heating and air conditioning equipment; the installation of pneumatic and electrical systems, door systems, passenger seats, passenger

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 CFR 661.7.

Date _____
Signature _____
Company _____
Name _____
Title _____

[71 FR 14117, Mar. 21, 2006, as amended at 72 FR 53698, Sept. 20, 2007; 74 FR 30239, June 25, 2009]