



U.S. Department
of Transportation

**Federal Transit
Administration**

Chief Counsel

1200 New Jersey Avenue, SE
Washington, DC 20590

DEC 20 2017

Mr. Alfred M. Wurglitz, Esq.
Miles & Stockbridge, P.C.
11 N. Washington Street, Suite 700
Rockville, Maryland 20850

Dear Mr. Wurglitz:

Your letter to Acting Administrator K. Jane Williams concerning the treatment of rolling stock car body shells under the Federal Transit Administration's Buy America regulation was forwarded to my office for a response.

You asked FTA to reaffirm the guidance contained in a letter dated December 7, 2007, from then-FTA Administrator James Simpson, advising recipients and manufacturers that the inclusion of car body shells in FTA's 2007 Buy America Final Rule did not change the status quo for transit vehicle manufacturers who account for tubular steel and other items listed in Appendix B of the Final Rule as "components" in their Buy America calculations. In that letter, Administrator Simpson acknowledged that manufacturers who construct bus shells using traditional methods and materials (e.g., structural steel tubes, aluminum extrusions, exterior panels and interior trim, flooring, and floor coverings), may continue to treat those items as separate vehicle components.

This letter confirms that the December 7, 2007 letter remains in effect and has not been rescinded. I also note that the Fixing America's Surface Transportation Act (Pub. Law 114-94) (FAST Act) amended 49 U.S.C. § 5323 by adding paragraph (j)(5), which states that if rolling stock frames or car shells are not produced in the United States, the cost of the steel or iron produced in the United States and incorporated in the rolling stock frame or car shell may be included in the cost of domestic content, provided that the average cost of the vehicles under that procurement is more than \$300,000.

I also note that under the FAST Act's methodology, although the domestic content of the component might meet or exceed the applicable thresholds under 49 U.S.C. § 5323(j)(2)(C)(i), 49 C.F.R. § 661.11(g) of FTA's Buy America regulation requires the component to be manufactured in the United States in order for the entire value of the component to be treated as of domestic origin. Absent domestic manufacturing activities, only the material costs of the reimported steel or iron may be included in the vehicle's domestic content calculation.

I trust this responds to your request. If you have any additional questions, please do not hesitate to contact Laura Ames at (202) 366-2743.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dana Nifosi". The signature is fluid and cursive, with the first name "Dana" and last name "Nifosi" clearly distinguishable.

Dana Nifosi
Acting Chief Counsel

cc: Cecelia Comito



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DEC - 7 2007

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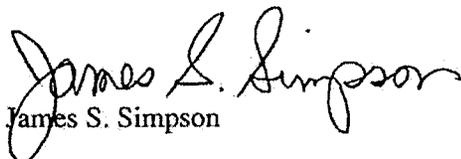
Dear Mr. Wurglitz:

Thank you for your letter dated November 15, 2007, seeking clarification of the Federal Transit Administration's (FTA) Buy America Final Rule published on September 20, 2007 (72 Fed. Reg. 53688). Specifically, you asked whether the inclusion of "car body shells" in the modified Appendix B to section 661.11 (Typical Components of Buses) alters the status quo with regard to the construction and final assembly processes of rolling stock.

Let me reassure you that it was not the intent of FTA to alter final assembly requirements or the methods by which domestic and non-domestic content are calculated. Based on the comments received in response to the November 30, 2006, Supplemental Notice of Proposed Rulemaking (71 Fed. Reg. 69412), FTA decided to continue to implement the final assembly requirements as described in FTA's March 18, 1997, Dear Colleague letter and ratified by Congress in section 3035 of the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178). The Final Rule noted that a few minor additions were made to Appendix B to reflect industry practices since the 1997 Dear Colleague was issued, such as the use of single-piece fiberglass bus shells, but for those manufacturers who construct bus shells using traditional methods and materials (e.g., structural steel tubes, aluminum extrusions, exterior panels and interior trim, flooring, and floor coverings), FTA retained those components in the revised Appendix B and vehicle manufacturers may continue to account for them as separate vehicle components.

Thank you for the opportunity to clarify this matter. Please do not hesitate to contact me directly at (202) 366-4040, if I may be of further assistance.

Sincerely,


James S. Simpson