



June 20, 2012

Department of Transportation
Docket Operations
West Building, Room W12-140
1200 New Jersey Avenue S.E.
Washington, DC 20590

RE: Docket No. FTA-2012-0019

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Transit Administration (FTA) notice and request for comments on Application of Buy America Waivers to Rolling Stock Overhauls and Rebuilds, published May 21, 2012 at 77FR 29953.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than 90 percent of Americans who use public transportation are served by APTA member transit systems.

While we support efforts to expand and support a strong public transit manufacturing base in the United States, we believe there are several fundamental problems with the proposed statement of policy that suggest it should not be adopted.

The proposed policy would differentiate between major maintenance events based on whether they were intended to meet a vehicle's expected useful life and those intended to extend a vehicle's expected useful life by minimums of four and 10 years for buses and rail cars.

While at first blush, this would appear to establish a bright line for application of Buy America, in practice such a bright line would be elusive. FTA has itself noted the staggering amount of maintenance that has been deferred throughout the public transportation industry and taken strong steps to reverse that trend through implementation of its state of good repair initiative. Deferring major maintenance of rolling stock clouds the distinction between overhauls and rebuilds. Deferring an overhaul until near the end of a vehicle's expected useful life effectively adds to that useful life, regardless of what the maintenance event is called. As a practical matter, most major maintenance events tend to add useful life to a vehicle beyond initial expectations.

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The rolling stock waiver requires original equipment manufacturers and those providing major maintenance services to comply with a 60 percent US content standard while manufactured products must meet a 100 percent standard. The substantial differences in counting methods prove illustrative in this discussion.

While content audits ‘drill down’ under the rolling stock waiver to ensure the 60 percent minimum is met through the component level of analysis (i.e., components require manufacture in the United States and at least 60 percent US subcomponents), the same is not true for manufactured products. A component analyzed as a manufactured product can theoretically consist of 100 percent foreign subcomponents, as long as it is manufactured in the United States. The proposed policy would then, in some cases, allow reduced, rather than increased, US content when components are replaced. At the subcomponent level, analysis under the manufactured product standard would actually amount to no requirement for US content at all.

Application of the manufactured product standard for overhauls also threatens to require extensive expenditures to replace non-US manufactured components that were, in good faith, incorporated into the allowable foreign content of an original vehicle design. Replacement of a foreign component with one of US manufacture would, in many cases, require extensive redesign of existing rolling stock, unnecessarily adding to overhaul costs. Increasing the cost burden of overhauls on agencies will exacerbate rather than relieve the industry’s backlog of deferred maintenance and could easily lead to less rather than more US jobs as maintenance tasks are increasingly deferred as too costly to complete.

We note public transit agencies (such as Sacramento RTD, Valley Metro Rail, Metrolink, Tri-Met, SEPTA, and DART), original equipment manufacturers (such as Volvo and Alstom), suppliers (such as Marathon Brake Systems and Fraser Gauge and Tool), and consultants (such as Diversity Matters 2 US) have all reiterated the difficulty and costs inherent in applying the manufactured product standard to overhauls in their individual docket comments.

Additionally, we are concerned that the fabrication of several “assemblies” counted under the rolling stock waiver as components may not be found to be sufficient to amount to a “manufacturing” process when viewed under the manufactured product standard. Inconsistent application of the rules would counter the benefits FTA created when it adopted the “non-shifting” approach to Buy America in its 2007 rulemaking.

Compounding all of these issues is the fact that, over many years of practice, well intentioned businesses have established their manufacturing processes to comply with the Buy America rolling stock standard while minimizing costs for their transit agency customers. Disturbing these established processes could well drive some of these businesses from the industry altogether.

In short, the proposed policy could well have downstream consequences that far outweigh any perceived support of the US industrial base, possibly even damaging rather than supporting the fragile public transportation manufacturing community.

We recommend the proposed policy be revoked and FTA continue to apply the rolling stock waiver to all major maintenance events, consistent with the long standing current practice.

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We appreciate the opportunity to assist FTA in this important endeavor. For additional information, please contact James LaRusch, APTA's chief counsel and vice president corporate affairs, at (202) 496-4808 or jlarsch@apta.com.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael P. Melaniphy". The signature is fluid and cursive, with a prominent flourish at the end.

Michael P. Melaniphy
President & CEO

MPM:jpl