

§661.12

49 CFR Ch. VI (10-1-07 Edition)

control equipment, propulsion cooling equipment, friction brake equipment, energy sources for auxiliary equipment and controls, heating and air conditioning equipment, interior and exterior lighting equipment, coupler equipment and coupler control system, communications equipment, pneumatic systems, electrical systems, door and door control systems, passenger seats, passenger interiors, cab interiors, destination signs, wheelchair lifts (or other equipment required to make the vehicle accessible to persons with disabilities), motors, wheels, axles, gear boxes or integrated motor/gear units, suspensions, and truck frames. Final Assembly activities shall also include the inspection and verification of all installation and interconnection work; and the in-plant testing of the rail car to verify all functions. In the case of articulated vehicles, the interconnection of the car bodies or shells shall be included as work to be performed by the manufacturer as part of vehicle delivery.

(b) *Buses:* In the case of a new, remanufactured, or overhauled bus, final assembly would typically include, at a minimum, the installation and interconnection of the typical Bus Components listed in §661.11, Appendix B, including but not limited to the following items: car bodies or shells, the engine and transmission (drive train), axles, energy management and storage devices, articulation equipment, propulsion control system, chassis, and wheels, cooling system, and braking systems; the installation and interconnection of the heating and air conditioning equipment; the installation of pneumatic system and the electrical system, door systems, passenger seats, passenger grab rails, destination signs, wheelchair lifts or ramps and other equipment required to make the vehicle accessible to persons with disabilities, and road testing. Final Assembly activities shall also include final inspection, repairs and preparation of the vehicles for delivery. In the case of articulated vehicles, the interconnection of the car bodies or shells shall be included as work to be performed by the manufacturer as part of vehicle 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.

2. At 72 FR 55103, Sept. 28, 2007, Appendix D to §661.11 was amended by correcting paragraphs (a) and (b), effective Oct. 22, 2007. For the convenience of the user, the revised text is set forth as follows:

APPENDIX D TO §661.11—MINIMUM REQUIREMENTS FOR FINAL ASSEMBLY

(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.

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

\* \* \* \* \*

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

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.

*Certificate of Compliance With Section 165(b)(3)*

The bidder or offeror hereby certifies that it will comply with the requirements of section 165(b)(3), of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations of 49 CFR 661.11.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

*Certificate for Non-Compliance with  
Section 165(b)(3)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirement consistent with section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and the applicable regulations in 49 CFR 661.7.

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

[71 FR 14117, Mar. 21, 2006]

EFFECTIVE DATE NOTE: At 72 FR 53698, Sept. 20, 2007, § 661.12 was amended by removing "Certificate of Compliance With Section 165(b)(3)" and adding in its place "Certificate of Compliance with Buy America Rolling Stock Requirements" and removing "section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended" and adding in its place "49 U.S.C. 5323(j)" and removing "Certificate for Non-Compliance with Section 165(b)(3)" and adding in its place "Certificate of Non-Compliance with Buy America Rolling Stock Requirements"; removing "section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended" and adding in its place "49 U.S.C. 5323(j)"; and removing "section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act of 1982" and adding in its place "49 U.S.C. 5323(j)(2)(C)", effective Oct. 22, 2007.

**§ 661.13 Grantee responsibility.**

(a) The grantee shall adhere to the Buy America clause set forth in its grant contract with FTA.

(b) The grantee shall include in its bid or request for proposal (RFP) specification for procurement within the scope of this part an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate in accordance with §§ 661.6 or 661.12 of this part, as appropriate.

(1) A bidder or offeror who has submitted an incomplete Buy America certificate or an incorrect certificate of noncompliance through inadvertent or clerical error (but not including failure to sign the certificate, submission

of certificates of both compliance and non-compliance, or failure to submit any certification), may submit to the FTA Chief Counsel within ten (10) days of bid opening of submission or a final offer, a written explanation of the circumstances surrounding the submission of the incomplete or incorrect certification in accordance with 28 U.S.C. 1746, sworn under penalty of perjury, stating that the submission resulted from inadvertent or clerical error. The bidder or offeror will also submit evidence of intent, such as information about the origin of the product, invoices, or other working documents. The bidder or offeror will simultaneously send a copy of this information to the FTA grantee.

(i) The FTA Chief Counsel may request additional information from the bidder or offeror, if necessary. The grantee may not make a contract award until the FTA Chief Counsel issues his/her determination, except as provided in § 661.15(m).

(ii) [Reserved]

(2) For negotiated procurements, compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer or final revised proposal. However, where a grantee awards on the basis of initial proposals without discussion, the certification submitted with the initial proposal shall control.

(3) Certification based on ignorance of the proper application of the Buy America requirements is not an inadvertent or clerical error.

(c) Whether or not a bidder or offeror certifies that it will comply with the applicable requirement, such bidder or offeror is bound by its original certification (in the case of a sealed bidding procurement) or its certification submitted with its final offer (in the case of a negotiated procurement) and is not permitted to change its certification after bid opening or submission of a final offer. Where a bidder or offeror certifies that it will comply with the applicable Buy America requirements, the bidder, offeror, or grantee is not eligible for a waiver of those requirements.

[56 FR 932, Jan. 9, 1991, as amended at 68 FR 9799, Feb. 28, 2003; 71 FR 14117, Mar. 21, 2006]