



Robert F. Nixon, President  
Diversity Matters 2 US, LLC  
20 West Academy Street  
Canisteo, NY 14823  
(607) 382-8184  
www.dm2us.com  
bobnixon@stny.rr.com

September 7, 2017

US Department of Transportation  
1200 New Jersey Avenue SE, Docket Operations, M-30  
West Building, Ground Floor, Room W12-140  
Washington, DC 20590-0001

Attention: Ms. Cecelia Comito, Assistant Chief Counsel, Office of Chief Counsel

RE: Docket Number FTA-2015-0020 Buy America Handbook - Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements

Dear Ms. Comito,

In response to Docket Number FTA-2015-0020 Buy America Handbook - Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements issued January 17, 2017, King County Metro Superintendent of Transit Fleet Contract Management Group Mr. Steve Policar and I respectfully submit the following comments.

As 20+ year strong supporters of Buy America, Mr. Policar and I commend FTA for their efforts to gradually increase domestic content. However, we wish to help correct some inaccuracies contained within the Handbook.

Please contact Mr. Policar at (206) 477-5878 or [steve.policar@kingcounty.gov](mailto:steve.policar@kingcounty.gov) or me whenever we may be of assistance. Steve and I welcome the opportunity to meet with you in Washington, DC to work through these issues and participate in future stakeholder meetings.

Thank you for your consideration.

Respectfully yours,

Robert F. Nixon

A handwritten signature in blue ink that reads 'RF Nixon'.

DM2US

Steven S. Policar

A handwritten signature in blue ink that reads 'Steven S. Policar'.

King County Metro

cc: Patrick Centolanzi, Richard Wong

## Comments to FTA's New Buy America Handbook

The biggest **improvements** of the January 17, 2017 (effective March 21, 2017) compared to the May 2015 "Proposed" Handbook are:

- FTA agreeing to delete in its entirety the May 2015 "Proposed" Handbook "Worksheets" listing different and many more Components than are listed in Appendices B and C to 49 CFR Part 661.11.
- FTA Re-inserting wording to protect Vehicle Builders from auditors attempting to obtain copies of proprietary documentation (in **Sections 2.2.2.** on page 10, **3.1.2.** on page 22) similar to the 1995 Handbook.
- FTA's recommended best practice of Intermediate Audits can help prevent potential non-compliance while there's still time to correct deficiencies.

Auditors, Vehicle Builders and Component suppliers face an uphill battle in managing Buy America audits under FTA's new Handbook because the calculation methodology is incorrect and expectations upon all three parties are unrealistic, overly intrusive and may violate a supplier's right to protect proprietary information.

### Summary of 8 Main Topics concerning the January 17, 2017 Handbook:

1. A component's **manufacturing** cost is **never used** when **calculating** the **domestic content** of that **component**; its **domestic content** is **based on subcomponent cost only**.
2. A Component's **manufacturing cost items** are the **same** for **both** Vehicle Builders and external suppliers
3. A Component "**of domestic origin**" can contain **foreign profit** and **administrative and overhead** costs
4. Both domestic- and foreign-manufactured Components contain **transportation** costs
5. The Handbook's Vehicle "Domestic Content Worksheet" unrealistically presumes Component Suppliers will provide proprietary dollar values of their Manufacturing Costs and Individual Subcomponents
6. Uniformly use only the term "*more than the minimum required percentage*"
7. Which costs (besides direct labor) should be include in a **Vehicle Builder's final assembly costs**
8. Buy America Auditors and Resident Inspectors have different roles and expertise

## Excerpts explaining 8 Main Topics of the January 17, 2017 Handbook:

### **1. A component's manufacturing cost is never used when calculating the domestic content of that component; its domestic content is based on subcomponent cost only.**

A Component's **manufacturing cost** (whether purchased from an external supplier or manufactured internally by the Vehicle Builder) is **not included** when calculating the **domestic content costs/percentage** of its **Subcomponents**.

Two-Part test for Component "of U.S. Origin"

49 CFR Part **661.11(g)** states "*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.*"

**FTA's 1995 Handbook** correctly states "*A component's manufacturing cost is never used when calculating the domestic content of that component; its domestic content is based on subcomponent cost only. However, the component's manufacturing cost should be used in the domestic content calculation of the bus, if the component was manufactured in the United States. Notice in the (1995 Handbook) examples that the \$1,000 manufacturing cost never contributes toward the domestic content of the **component**, but it does contribute toward the domestic content of the **bus***"

Although FTA's new Handbook **correctly** states in **some** sections to divide individual Subcomponents by the cost of **all Subcomponents**, FTA **incorrectly** states in **other** sections to divide individual Subcomponents by the total cost (i.e., sell price) of the **Component**.

Example: Excerpt from Sample Buy America Supplier Certification on pages 50 and 71

While page 50 correctly states in the 2nd box "*the cost of U.S. subcomponents and cost of U.S. manufacturing labor are eligible for inclusion...*," page 71 incorrectly states (only) "*the cost of U.S. subcomponents is eligible for inclusion ...*" thereby deleting "*...and cost of U.S. manufacturing labor*"

**Correct** Component Calculation Instructions

**Section 4.5 Manufacturer Documentation, Step 3, Page 50**

Calculate the cost of U.S. subcomponents by dividing the cost of U.S. subcomponents by the cost of all subcomponents for each component.

**Appendix B.6. Sample Buy America Certification, Instructions for Completing the Buy America Certificate, Page 70**

The cost of U.S. subcomponents is calculated by dividing the cost of U.S. subcomponents by the cost of all subcomponents for each component.

**Incorrect** Component Calculation Instructions

**Section 4.3.1. Domestic Content Worksheet Instructions, Step 7, Page 43**

This (material cost) percentage is calculated by taking the cost of the subcomponent and dividing it by the total cost of the component.

Calculate the total percentage by cost of U.S. content by dividing the *U.S. Subcomponents Subtotal* into *Component Total Cost*.

Calculate the total percentage by cost of foreign content by dividing the *Foreign Subcomponents Subtotal* into *Component Total Cost*.

These two numbers should total 100%

Although the actual **sum total** of domestic and foreign **dollar values** are correct for each example in the Section 4.3. Domestic Content worksheet on page 39, the **calculation methodology** is misleading and **incorrect**.

**Question for FTA:** Does FTA agree a Component's manufacturing cost (whether purchased from an external supplier or manufactured internally by the Vehicle Builder) is **never included** when calculating the **domestic content cost/percentage** of its **Subcomponents**?

## 2. A Component's **manufacturing cost items** are the **same** for **both** Vehicle Builders and external suppliers

Neither FTA's new Handbook nor 49 CFR Part **661.11(m)(1)** addresses the fact an **external** Component supplier's (whether domestic or foreign) **sell price paid** by the Vehicle Builder (i.e., "*bidder or offeror*") includes the same Component manufacturing cost items as those incurred by the Vehicle Builder under **661.11(m)(2)** (i.e., *labor, profit, administrative and overhead*).

49 CFR Part **661.11(m)(1)** states "*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.*"

49 CFR Part **661.11(m)(2)** states "*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.*"

**Question for FTA:** Does FTA agree an external Component supplier's (whether domestic or foreign) **sell price paid** by the Vehicle Builder (i.e., "*bidder or offeror*") includes the same Component manufacturing cost items as those incurred by the Vehicle Builder under **661.11(m)(2)**?

**Question for FTA:** Does FTA agree all Components have a "Component manufacturing cost" regardless of **whether** they're **domestic or foreign** and whether they're manufactured by the **Vehicle Builder or an external supplier**?

**Question for FTA:** Does FTA agree the "Labor/Overhead/Profit" costs (see FTA handbook pages 39 and 40) of a Vehicle Builder's (i.e., FTA Handbook term "*OEM's*") internally-manufactured Component (e.g., "*Component 1*") is counted the same as "*Component manufacturing costs*" of an external supplier's Component (e.g., "*Component 3*")?

### 3. A Component “of domestic origin” can contain foreign profit and administrative and overhead costs

Neither FTA’s new Handbook nor 49 CFR Part 661.11(g) addresses the fact a U.S.-**manufactured** Component containing more than the required requirement of domestic Subcomponents can contain foreign **profit** and **administrative and overhead** costs (e.g., Engineering, Program Management, QA/QC, etc.) and still have the Component’s entire sell price counted as domestic by the Vehicle Builder.

Determining whether and where a Component is manufactured is simply pass/fail based upon where the “*the subcomponents have been substantially transformed or merged into a new and functionally different article*” (i.e., manufacturing direct labor) occurs, regardless of whether the **profit** and **administrative and overhead** costs are foreign.

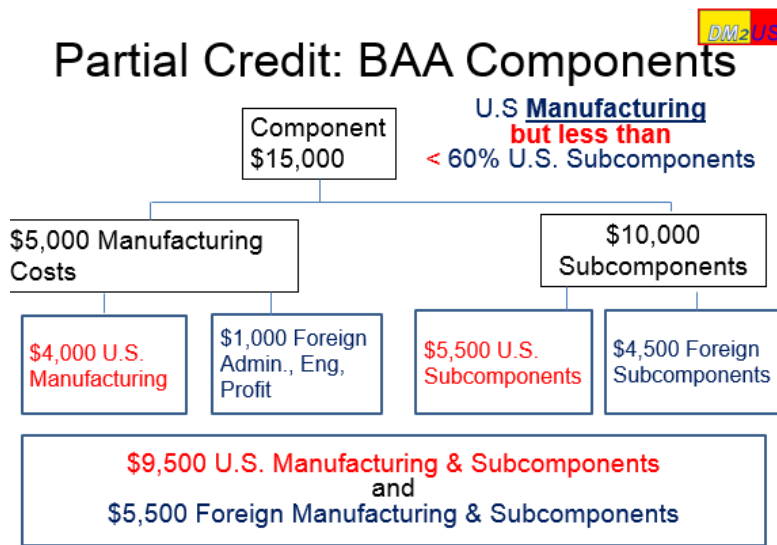
49 CFR Part **661.11(g)** states “*For a component to be of domestic origin, more than 60 percent of the subcomponents of that component, by cost, must be of domestic origin, and the manufacture of the component must take place in the United States. If, under the terms of this part, a component is determined to be of domestic origin, its entire cost may be used in calculating the cost of domestic content of an end product.*”

49 CFR Part **661.11(e)** states “*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.*”

Conversely, a U.S.-manufactured Component containing **less** than the required percentage of domestic Subcomponents must subtract any and all **foreign profit** and **administrative and overhead** costs (e.g., Engineering, Program Management, QA/QC, etc.), if applicable, from its sell price to the Vehicle Builder.

49 CFR Part 661.11(l) states “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”

Here’s an example illustration:



**Question for FTA:** Does FTA agree a U.S.-manufactured Component containing more than the required requirement of domestic Subcomponents can contain foreign **profit** and **administrative and overhead** costs (e.g., Engineering, Program Management, QA/QC, etc.) and still have the Component’s entire sell price counted as domestic by the Vehicle Builder?

#### 4. Both domestic- and foreign-manufactured Components contain **transportation costs**

All **Components** have “transportation costs to the final assembly location” regardless of **whether** they’re **domestic or foreign** and whether they’re manufactured by the **Vehicle Builder or an external supplier**.

**FTA’s 1995 Handbook** correctly states “*The cost of a domestic **component** includes direct labor costs, direct material costs, sales costs, general and administrative costs, and overhead costs associated with manufacturing that component, plus **freight-in costs***” (Q & A # 7) and “*The cost of an individual **subcomponent** is the price a component manufacturer pays a supplier for that subcomponent, plus **freight-in costs** and (if foreign) any applicable duties*” (Q & A # 3).

**Question for FTA:** Does FTA agree all Components have “transportation costs to the final assembly location” regardless of **whether** they’re **domestic or foreign** and whether they’re manufactured by the **Vehicle Builder or an external supplier**?

**Question for FTA:** Does FTA agree the cost of a domestic component includes direct labor costs, *direct material costs, sales costs, general and administrative costs, and overhead costs associated with manufacturing that component, plus **freight-in costs*** (1995 Handbook Q & A # 7)?

**Question for FTA:** Does FTA agree that, once foreign-manufactured Components clear customs at the U.S. border and are loaded onto U.S. transport trucks, those U.S. transport trucks should be counted as domestic content?



## 5. The Handbook's Vehicle "Domestic Content Worksheet" unrealistically presumes Component Suppliers will provide proprietary dollar values of their Manufacturing Costs and Individual Subcomponents

Section 2.2.2. *Documentation for Pre-Award Buy America Certification (Pre-Award Audit Report)*, Page 13: ...there is no requirement that the recipient or its auditors obtain copies of the documents; they need simply to review them.

Section 3.1.2. *Documentation for Post-Delivery Buy America Certification*, Page 23

There is no requirement that the recipient or its auditors obtain copies of the documents they review.

Similar to Vehicle Builders, Component suppliers should be protected from auditors (through Vehicle Builders) attempting to obtain copies of proprietary documentation. The auditor should be able to review them.

The Handbook's new expectation for Component suppliers *not "of domestic origin"* to reveal their **Subcomponent supplier's cost in dollar values** violates protection of **proprietary** data (see Section 4.3.1. *Domestic Content Worksheet Instructions*, Pages 39 to 47).

A **Component supplier** providing only **partial** U.S. Content is now (unrealistically) expected to submit to the Vehicle Builder (and auditor) the **proprietary dollar** values of their Component manufacturing costs and the dollar value cost of each individual Domestic (and Foreign) Subcomponent.

Many Component suppliers will resist or refuse to provide in writing the cost of their Subcomponents as a percentage of the total cost (i.e., sell price) of the **Component** because the Vehicle Builder and Auditor can easily calculate the proprietary dollar value of those individual Subcomponents.

**Proposed Solution for Component Supplier Buy America Certificates**  
*(including those not "of domestic origin")*

If a Component has some domestic content but fails to meet both parts of a Component's §661.11(g) two-part domestic origin requirement (i.e., US-manufactured Component and more than the minimum percentage of US Subcomponents), that Component supplier can report their exact domestic content value while still protecting their proprietary information by providing data in a method that reflects FTA's Buy America Rule **49 CFR §661.11**:

**1<sup>st</sup> box: 49 CFR §661.11(g)**

More than the required percentage of the subcomponents, by cost, are U.S. manufactured and the component is manufactured in the U.S. The Supplier attests that the U.S. content of subcomponents, by cost, is as indicated below.

U.S. <b>Component</b> Name/Description	U.S. <b>Component</b> supplier Company Name	U.S. <b>Component</b> supplier manufacturing location (city, state)	
U.S. <b>Subcomponent</b> Name/Description	U.S. <b>Subcomponent</b> supplier Company Name	U.S. <b>Subcomponent</b> supplier manufacturing location (city, state)	Subcomponent % of total cost of <b>all</b> <b>subcomponents</b> (domestic and foreign)

Total Domestic Subcomponent % of **all subcomponents** (domestic and foreign): \_\_\_\_\_%

**2<sup>nd</sup> box: 49 CFR §661.11(l)**

This component is **manufactured in the United States**, but contains **less than the required percentage of domestic subcomponents**, by cost. The Supplier attests the **combined cost** of the **domestic subcomponents and** the cost of **Component U.S. Manufacturing** is as indicated below.

U.S. <b>Component</b> Name/Description	U.S. <b>Component</b> supplier Company Name	U.S. <b>Component</b> supplier manufacturing location (city, state)	
U.S. <b>Subcomponent</b> Name/Description	U.S. <b>Subcomponent</b> supplier Company Name	U.S. <b>Subcomponent</b> supplier manufacturing location (city, state)	Subcomponent % of total cost of <b>all</b> <b>subcomponents</b> (domestic and foreign)

Total Domestic Subcomponent % of **all subcomponents** (domestic and foreign): \_\_\_\_\_%

**Combined cost** of Domestic Subcomponents **and** Component U.S. Manufacturing: \$ \_\_\_\_\_

**3<sup>rd</sup> box: 49 CFR §661.11(i)**

This component is **not manufactured in the United States** but contains U.S. subcomponents exported for inclusion in a component that is manufactured outside the U.S. and received a tariff exemptions under the procedures set forth in 19 CFR 10.11 through 10.24. The Supplier attests the cost of the **domestic subcomponents** is as indicated below.

U.S. <b>Component</b> Name/Description	U.S. <b>Component</b> supplier Company Name	U.S. <b>Component</b> supplier manufacturing location (city, state)	
U.S. <b>Subcomponent</b> Name/Description	U.S. <b>Subcomponent</b> supplier Company Name	U.S. <b>Subcomponent</b> supplier manufacturing location (city, state)	Subcomponent % of total cost of <b>all</b> <b>subcomponents</b> (domestic and foreign)

**Combined cost of all Domestic Subcomponents**

**\$ \_\_\_\_\_**

## 6. Uniformly use only the term “more than the minimum required percentage”

In accordance with 49 CFR Part 661.11 (a) and (g), FTA should uniformly insert into this new Handbook the term “more than the minimum required percentage” for the cost of the domestic Components of a Rolling Stock vehicle and for the cost of the domestic Subcomponents of a Rolling Stock Component.

FTA’s new Handbook contains inconsistent and incorrect terms including “the minimum required percentage,” and “the minimum domestic content.”

## 7. Which costs (besides direct labor) should be include in a **Vehicle Builder’s final assembly costs**

Listed below are inconsistencies in FTA’s Handbook defining what costs (besides direct labor) should be include in a **Vehicle Builder’s final assembly costs**:

Section 2.2.3.3. *Verifying U.S. Final Assembly* on Page 17 states “proposed direct labor associated with the U.S. final assembly production line”

Section 3.1.3.4. *Verification of U.S. Final Assembly* on Page 24 states “The total cost of final assembly, including labor and overhead costs”

Section 3.1.3.4 *Verification of U.S. Final Assembly* on page 25 states:

“labor and overhead costs”

“breakdown of the labor hours and hourly rates by craft (or a composite rate based on the ratio of the associated skill sets and supervisory personnel)”

“all costs consistent with the minimum requirements”

“supervisory personnel”

## 8. Buy America Auditors and Resident Inspectors have different roles and expertise

Since the Buy America Auditor has little/no technical expertise as a Resident Inspector and the qualifications/expertise for both positions are very different, it’s simply unrealistic to presume the same person can properly perform the critical duties of both positions.

## Detailed Page-by-page analysis of the January 17, 2017 Handbook:

### **Front Cover**

**Question for FTA:** Does FTA agree the word “*revenue*” should be inserted into the document title to send a simple, loud and clear message from the very start that the Handbook applies only to revenue rolling stock?

### **Section: Foreword, Page 1**

**Comment:** Is this Handbook isn’t binding on the DOT administering this program, how binding can it be on Recipients, their auditors, vehicle manufacturers or Component suppliers?

### **Section: Introduction, Page 2**

**Question for FTA:** Does FTA agree the “*The purpose of this Handbook is to assist recipients, auditors, rolling stock manufacturers (manufacturers), and subcontractors and suppliers (suppliers) in understanding and correctly applying FTA’s pre-award and post-delivery audit requirements for **rolling stock** vehicle (vehicle) purchases*” should be changed to “*The purpose of this Handbook is to assist recipients, auditors, rolling stock manufacturers (manufacturers), and subcontractors and suppliers (suppliers) in understanding and correctly applying FTA’s pre-award and post-delivery audit requirements for **revenue** rolling stock vehicle (vehicle) purchases*”?

### **Section: Introduction, Page 2**

**Question for FTA:** Does FTA agree the word ‘revenue’ should be inserted before the phrase ‘rolling stock’ in the last sentence of the paragraph of the introduction paragraph to consistently reinforce the scope of the Handbook’s coverage applies only to revenue rolling stock?

The overall aim is to guide Handbook users through the necessary steps to meet the pre-award audit and post-delivery audit requirements as well as to bring greater uniformity to the way the industry conducts and documents pre-award and post-delivery audits of **revenue** rolling stock purchases.

### **Section 1.1 Scope, Page 2**

**Question for FTA:** Does FTA agree the term “*vehicle end products*” should be changed to “***other rolling stock end products***” to match § 661.11(a)?

**Comments:** FTA-funded procurements for “*non-revenue service vehicles; vehicle rehabilitations, rebuilds, repowers, or overhauls, undertaken on a recipient’s existing vehicles*” and other FTA-funded rolling stock end products are still subject to 49 CFR Part 661.11 (even if this handbook doesn’t apply). Although Buy America audits aren’t required for “other rolling stock” procurements, audits are becoming far more common.

### **Section 1.3 Organization of Handbook, Footnote 7, Page 4**

**Comments:** Although the § 661.5 structural steel requirements do not apply to 661.11 Rolling Stock procurements, the **FAST Act**

([https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Chapter%2053%20as%20amended%20by%20the%20FAST%20Act\\_0.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Chapter%2053%20as%20amended%20by%20the%20FAST%20Act_0.pdf) ) states “Rolling stock frames or car shells.—In carrying out paragraph (2)(C) in the case of a rolling stock procurement receiving assistance under this chapter in which the average cost of a rolling stock vehicle in the procurement is more than \$300,000, if rolling stock frames or car shells are not produced in the United States, the Secretary shall include in the calculation of the domestic content of the rolling stock the cost of steel or iron that is produced in the United States and used in the rolling stock frames or car shells.” (Section 5323 j 5)

**Question for FTA:** Since the Secretary shall include the cost of U.S.-produced steel or iron exported into a foreign-produced rolling stock frame or car shell, how are the requirements of 661.11 (j), (k) and (l) met?

### **Section 1.3 Section 3 – Post-Delivery Audit, Page 5**

**Comment:** Please change “Section 3.1.3.4.” to “Section 3.1.3.6.” to correctly reference “Post-Delivery Domestic Content Monitoring.

### **Section 1.5 Definitions, Page 7**

**Question for FTA:** What are the qualifications of a “qualified auditor”?

**Question for FTA:** Are the qualifications different for an internal (i.e., recipient staff) versus an external independent auditor?

### **Section 1.5 Definitions, Page 7**

**Question for FTA:** Does FTA agree the definition of the term ‘Audit’ needs to be modified to distinguish the Buy America Auditor’s audit report of domestic content and final assembly from the required Buy America certificates?

**Comments:** The Handbook definition of ‘Audit’ states: “A review resulting in a report containing the necessary certifications of compliance with Buy America standards, purchaser’s requirements specifications, and, where appropriate, a manufacturer’s certification of compliance with or inapplicability of the Federal Motor Vehicle Safety Standards. (49 CFR § 663.5).”

The Buy America Auditor is responsible for issuing the Buy America Audit Report. Issuing the Buy America certificates is the responsibility of the Recipient. The first certificate is the Buy America compliance certificate in which the Recipient certifies that a Buy America Audit was completed and the requirements of domestic content and final assembly were met or not met. Clearly, the Buy America compliance certificate cannot be issued until the Buy America Audit has been completed and the Buy America Audit Report has been issued. The Purchaser’s Requirements certificate presents another set of nuances that further complicate matters. The Pre-Award Purchaser’s Requirements certificate requires a certain amount of due diligence be applied to make a determination that the contractor is responsible; and that diligence extends to three areas:

1. An examination of the contractor’s technical proposal to determine it meets the Recipient’s technical specifications.
2. An examination of the contractor’s financial resources to determine the contractor has the financial capacity to carry out the contract.

3. An examination of the contractor's technical resources to determine the contractor has the technical capacity to carry out the contract.

These three examinations are fundamental to awarding a contract, and such a determination of responsibility is explicitly required by FTA Circular 4220.1F for FTA-funded third party agreements. In proper sequence, the due diligence underlying the determination of responsibility is done **before** a contractor is selected. This would indicate the responsibility determination would be done before the Buy America Audit is ever started. Accordingly, since this determination of responsibility clearly rests with the Recipient, it does not necessarily belong in the Buy America Pre-Award Audit Report. The Post-Delivery Purchaser's Requirements requires a determination that the vehicles as-built were built to the Recipient's specifications similar to the pre-award requirement. Post-delivery imposes a different layer of due diligence related to observation and monitoring of the actual manufacturing and assembly of the vehicle as performed by the Recipient's Resident Inspector. Additionally, the post-delivery certificate is supported by the requisite documentation of manufacturing, assembly, QA et al in the Resident Inspector's Report. The regulations require the Recipient's Resident Inspector to be engaged in vehicle inspection "*throughout the period of manufacture of the rolling stock*".

The Buy America Post-Delivery Audit report must be issued before the first vehicles go into service or before title transfer whichever comes first. Any sizable order, e.g., more than 10 vehicles will likely result in some vehicles going into service (or having title transferred) long before all 10 vehicles have been manufactured. Here is where two different parts of the regulations conflict: 663.5 defines the end of post-delivery as the point in time when title to the rolling stock is transferred to the recipient or the rolling stock is put into revenue service, whichever is first. This ostensibly sets the 'due date' for the Buy America Post-Delivery Audit report. 663.37 calls for the Resident Inspector to be at the manufacturing site throughout the period of manufacture of the rolling stock. In practice, it becomes extremely difficult, albeit impossible for an audit report be timely and to encompass the Purchaser's Requirements certificate. The Post-Delivery Purchaser's Requirements Certificate is largely based on a Resident Inspector's report that encompasses all the vehicles because according to the regulation, the report must address all vehicles built in the manufacturing period. The timely Post-Delivery Audit report is frequently completed soon after the first few vehicles are delivered while remaining vehicles are still being built. In many instances, it becomes difficult if not impossible for a Buy America Post-Delivery Audit Report to encompass all three certificates required to be filed and maintained by the Recipient.

**§663.5 Definitions.**

*As used in this part—*

*(a) Pre-award means that period in the procurement process before the recipient enters into a formal contract with the supplier.*

*(b) Post-delivery means the time period in the procurement process from when the rolling stock is delivered to the recipient until title to the rolling stock is transferred to the recipient or the rolling stock is put into revenue service, whichever is first.*

*Suffice it to say, the definition should be modified to fit the reality and experience of the FTA's 25+ years of Buy America auditing.*

**§663.37 Post-delivery purchaser's requirements certification.**

For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—

- (a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock.

The third certificate FMVSS, applies to motor vehicles only, and the Recipient is also responsible for this certificate, not the Buy America Auditor.

**Recommended Wording:** The results of Buy America audit should be communicated in an audit report prepared by the Buy America auditor. The audit report must address whether the vehicles to be purchased complied with the Buy America requirements of domestic content and final assembly. The audit report may also address the Buy America auditor's review of the Recipient's Buy America certificates. That review should conclude whether the Recipient's appropriate Buy America certificates were in place as required by the regulations, and whether the Recipient conducted adequate review and analysis to determine whether the certificate requirements were satisfied.

**Question for FTA:** Does FTA agree the wording below needs to be changed to accurately reflect the regulations? The Handbook states: *"There are three certifications that must be included in the pre-award audit:*

- **Pre-Award Buy America Certification or Pre-Award Buy America Certificate of Non-Compliance**
  - *Note: To complete this Certification, the recipient must receive the Manufacturer's Certification of Compliance or Non-Compliance with Buy America Rolling Stock Requirements per 49 CFR § 661.12."*

**Comments:** The Handbook as written gives a misleading message about the timing of receipt of the TVM's certificate of compliance or non-compliance.

**§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.**

**Recommended Wording:** *"Pre-Award Buy America Certification or Pre-Award Buy America Certificate of Non-Compliance Note: To complete this Certification, the recipient must have a finalized Buy America Pre-Award Report that reflects the Buy America Auditor's determination of compliance or non-compliance with the requirements of 49 CFR 661.11. In accordance with 49 CFR 661.13, the Manufacturer's Certification of Compliance or Non-Compliance is required to be submitted with their bid or offer during the procurement process. Failure to do so would render their bid or offer non-responsive and lead to disqualification from the competition."*



**Section 2.2.1. Recipient's Pre-award Certification of an Applicable Waiver, Page 12**

**Question for FTA:** Does FTA agree the following statement on page 12 is incorrect, and the footnote 14 reference to 49 CFR 661.7(f) is not the relevant reference, and accordingly should be stricken from the Handbook? *“Only waivers based on public interest or non-availability may be granted for a component or subcomponent in the case of the procurement of rolling stock procurements.14”*

**Comments:** The Handbook citation at footnote 14 is 49 CFR 661.7(f) states: *“(f) The waivers described in paragraphs (b) and (c) of this section may be granted for a component or subcomponent in the case of the procurement of the items governed by 49 U.S.C. 5323(j)(2)(C) (requirements for rolling stock). If a waiver is granted for a component or a subcomponent, that component or subcomponent will be considered to be of domestic origin for the purposes of §661.11 of this part.”*

This does not speak to price differential and appears to be an incorrect citation.

49 CFR 661.7(d) speaks to the price differential waiver and states: *“(d) Under the provision of section 165(b)(4) of the Act, the Administrator may waive the general requirements of section 165(a) if the Administrator finds that the inclusion of a domestic item or domestic material will increase the cost of the contract between the grantee and its supplier of that item or material by more than 25 percent. The Administrator will grant this price-differential waiver if the amount of the lowest responsive and responsible bid offering the item or material that is not produced in the United States multiplied by 1.25 is less than the amount of the lowest responsive and responsible bid offering the item or material produced in the United States.”*

The Handbook's assumption that the price differential waiver does not extend to rolling stock procurements is not consistent with the regulation or the statute.

**Recommended Wording:** Delete the following sentence and its footnoted reference: *“Only waivers based on public interest or non-availability may be granted for a component or subcomponent in the case of the procurement of rolling stock procurements.14”*

**Section 2.2.1. Recipient's Pre-award Certification of an Applicable Waiver, Page 12**

**Comment:** Although the likelihood of approval is less, a Component waiver can be applied for after contract award.

**Section 2.2.2. Documentation for Pre-Award Buy America Certification (Pre-Award Audit Report), Page 13**

**Comments:** Similar to Vehicle Builders, Component suppliers should be protected from auditors (through Vehicle Builders) attempting to obtain copies of proprietary documentation.

Despite this clear directive, some auditors will continue to pressure Vehicle Builders and Component suppliers to walk away with proprietary costing documents, especially during Pre-Award audits when the “Apparent Successful Proposer” Vehicle Manufacturer doesn't want to upset their FTA Recipient customer and risk delay of award or being deemed non-complaint.

**Section 2.2.2. Documentation for Pre-Award Buy America Certification (Pre-Award Audit Report), Page 13**

**Question for FTA:** Does FTA agree the following bullet item should be modified to clarify that FMVSS applies to motor vehicles and does not apply to rail vehicles?

- The manufacturer's FMVSS certification, if appropriate.

**Comment:** The FTA website clearly states the following regarding FMVSS:

Federal Motor Vehicle Safety Standards

Frequently Asked Questions

*Do the Federal Motor Vehicle Safety Standards (FMVSS) (49 CFR 571) apply to rail cars?*

The FMVSS requirements in 49 CFR 571 apply to motor vehicles and motor vehicle equipment only. The standards do not apply to rail cars. (Revised August 24, 2009)

**Recommended Wording:** *"The manufacturer's FMVSS certification, if appropriate. The FMVSS requirements in 49 CFR 571 apply to motor vehicles and motor vehicle equipment only. The standards do not apply to rail cars."*

**Section 2.2.2. Documentation for Pre-Award Buy America Certification (Pre-Award Audit Report), Page 13**

**Question for FTA:** Does FTA agree the following sentences needs to be revised? *"The recipient, or an auditor acting on the recipient's behalf, will review the supporting cost documents in order to verify the estimated domestic content, **especially if the manufacturer provides such domestic content only as a percentage.** "Manufacturers may provide estimated domestic content by cost either in dollar figures or as percentages of total materials cost."*

**Comments:** These first two sentences are inconsistent, confusing and do not allow for the proper conduct of an audit. To conduct the audit, the TVM **must** provide the auditor with supporting cost documents to verify domestic content substantiate compliance. If the manufacturer provides such domestic content only as a percentage, the auditor cannot do the requisite diligence needed to substantiate compliance with Buy America. The manufacturer must provide the cost detail to the auditor, and this must be done in confidence. The auditor's report (the public document) may include a worksheet displaying the domestic content by percentages only.

**Recommended Wording:** *"The manufacturer must provide documentation to support its domestic content listing and calculations. The recipient, or an auditor acting on the recipient's behalf, will review the supporting cost documents in order to verify the estimated domestic content. Any cost or other proprietary information provided during the audit must remain confidential. Cost or other proprietary information should not be disclosed in any Buy America Audit report, Pre-Award or Post-Delivery. For Buy America Audit reporting purposes, manufacturers may provide estimated domestic content by cost expressed as percentages of total materials cost."*

**Section 2.2.2. Documentation for Pre-Award Buy America Certification (Pre-Award Audit Report), Page 13**

**Question for FTA:** Does FTA agree the following wording needs to be revised?

*“Therefore, auditors will verify that the manufacturer’s pre-award audit documentation supports all costs used in developing the domestic content list (worksheet) and request any additional information necessary in order to verify and certify compliance with Buy America. In the absence of purchase orders or supplier quotes, this verification may be based on, among other things, estimates or other sources used in developing the bid.”*

**Comment:** If the auditor cannot verify cost by quote or invoice, then alternatively by engineering estimate or purchase order, what ‘other sources’ are there to examine?

**Recommended Wording:** *“For the pre-award audit, the auditor should review supplier quotes, supplier price lists, supplier invoices, purchase orders and engineering estimates to verify the cost of the items listed on the manufacturer’s pre-award audit domestic content worksheet.”*

**Section 2.2.3. Best Practices for Pre-Award Buy America Certifications, Page 14**

**Question for FTA:** Does FTA agree the following bullet point list needs to be revised as follows?

Add to the list of bullet points: *“Suppliers unfamiliar with Buy America regulations”*

Delete the bullet point: *“Engineering changes, field modifications or contract change orders causing changes in project scope (completed projects must comply with Buy America requirements after all change orders have been implemented for all vehicles).”*

**Comments:** The Handbook bullet regarding changes is not relevant to the pre-award audit. Changes usually do not occur at pre-award as no contract is in place; so there is no contract to make changes to at this stage. This bullet point is totally appropriate for a list of bullet points for the post-delivery audit stage.

**Section 2.2.3, Best Practices for Pre-Award Buy America Certifications, Page 14**

**Comment:** Please change *“Section 3.1.3.4.”* to *“Section 3.1.3.6.”* to correctly reference *“Post-Delivery Domestic Content Monitoring.”*

**Section 2.2.3, Best Practices for Pre-Award Buy America Certifications, Page 14**

**Question for FTA:** Does FTA agree the following statement needs stricken or modified significantly to describe this unique and rarely used tactic: *“Further, recipients may provide incentives for bidders to increase domestic content as long as those incentives are consistent with Federal and local law.”*

**Comments:** Incentives needs further explanation – this is a rarely used procurement technique (e.g., the BART railcar procurement 2012) and is not an issue of compliance with federal Buy America regulations. If FTA chooses to address this in the Handbook, it should be fully explained and the length of the explanation alone would warrant placement in a separate appendix as it is not common or mainstream practice but merely a state or local anomaly.

**Section 2.2.3.1 Solicitation Phase, Table 2 Recommended Discussion Topics During the Solicitation Phase of the Procurement, Page 15,**

**Question for FTA:** Does FTA agree the Table should be modified to delete the last item in the table: “Recipient’s process for selecting a Buy America auditor” as the Recipient’s process for selecting consultants, in-house experts has no bearing and offers no guidance on conducting pre-award and post-delivery audits for rolling stock procurements?

**Comments:** The table of recommended discussion topics during the solicitation phase of the procurement’ lists some excellent practices for managing ‘some’ of the issues, ‘ground rules’ and expectations involved in managing a Buy America audit. Contextually, this section refers to discussions between Transit Authority and proposers and/or part of an agenda for a pre-bid or pre-proposal conference. Other excellent and relevant practices are left completely off the list (e.g., the timing and process for carrying out the due diligence underlying the Pre-Award Purchaser’s Certificate). The last item on the table, the Transit Authority’s process for selecting the Buy America auditor has nothing whatsoever to do with conducting pre-award and post-delivery audits, and who the Transit Authority selects to conduct these audits is 100% in the purview of the Transit Authority and not relevant to the scenarios noted above and certainly not relevant to conducting Buy America audits of rolling stock procurements.

**Table 2. Recommended Discussion Topics During the Solicitation Phase of the Procurement, Page 15**

**Comments:** The “*wrong certification*” wouldn’t happen if the Recipient didn’t include both 661.6 and 661.12 certificates on Rolling stock-only procurements.

Many transit authorities unnecessarily include “§ 661.6 Certification requirements for procurement of steel or manufactured products” instead of “§ 661.12 Certification requirement for procurement of buses, other rolling stock and associated equipment” in their Rolling Stock procurements.

If a Vehicle Manufacturer submits “§ 661.6 Certification requirements for procurement of steel or manufactured products” instead of “§ 661.12 Certification requirement for procurement of buses, other rolling stock and associated equipment,” they are disqualified from contract award.

**Section 2.2.3.1, Solicitation Phase, Table 2, Recommended Discussion Topics During the Solicitation Phase of the Procurement, Page 15**

**Question for FTA:** Does FTA agree the Vehicle Manufacturer’s signed Buy America certificate should be added to this “Topics” list?

**Section 2.2.3.1, Solicitation Phase, Table 2. Recommended Discussion Topics During the Solicitation Phase of the Procurement, page 15**

and

**A.1 Proposal Compliance Checklist, page 58**

**Question for FTA:** Does FTA agree the Handbook’s reference on page 15 to the proposal compliance checklist found in Appendix A.1 and the referred to Appendix A.1 found on page 58 need to be modified to reflect the those items that are directly relevant to the Buy America Pre-Award and Post-Delivery audits?

**Comments:** The checklist there is an incomplete representation of a proposal compliance checklist Appendix A.1. The Handbook is supposed to focus on Buy America rolling stock audits, not a list of some of the items you need to look at when a proposal comes in the door. Is there a different list if the solicitation was a bid versus an RFP? A few of the items listed deal directly with a Buy America audit, many are not. The Handbook is trying to do too much here; it is off-subject and detracts from its core mission of providing guidance on rolling stock audits. Stick to the topic at hand. The bottom section of the list on Page 58, *Compliance with all Technical Specifications Requirements* gives the impression that the diligence required to determine compliance with technical specifications is reduced to 13 items. This sends the wrong message. The reality is that the analysis of compliance with the Transit Authority's technical specification section is usually a long, painstaking and detailed analysis of several pages of technical specifications (hundreds of pages for a railcar). This is not good guidance on this critical element of due diligence that is required to be completed and certified twice by the Transit Authority – once at pre-award to compare to the proposed specs and once at post-delivery to ensure the as-built specifications meet the Transit Authority's technical requirements. If you believe there is a value in providing such a list, keep it focused exclusively on Buy America requirements, make it comprehensive enough to add value to the user and do not try to cover the non-Buy America procurement requirements.

**Recommended Action:** Eliminate the Proposal Compliance Checklist reference from the last sentence on page 15 and eliminate the proposal compliance checklist on page 58.

### **2.3 Pre-Award Purchaser's Requirements Certification, Page 19**

**Question for FTA:** Does FTA agree the following statement should be restated to take into account those TVMs that do not issue public financial statements: *“At a minimum, recipients should review the proposed manufacturer’s public financial statements (if available).”*

**Comment:** The three elements of due diligence, 1. Specification compliance; 2. Technical Capability, and 3. Financial Capability, are fundamental to awarding a contract, and a determination of responsibility is explicitly required by FTA Circular 4220.1F for FTA-funded third party agreements.

**Recommended Wording:** *“At a minimum, recipients should review the proposed manufacturer’s financial statements. If financial statements are not available, recipients should obtain copies of the proposed manufacturer’s federal income tax returns.”*

### **Section 3 Post-Delivery Audit, Page 20**

**Question for FTA:** Does FTA agree every End product vehicle must meet Buy America?

**Question for FTA:** Does FTA agree *“Post-delivery, a manufacturer certifies that the requirements of the Buy America provisions were satisfied for the **total** vehicle(s) and all of its components”* should be changed to *“Post-delivery, a manufacturer certifies that the requirements of the Buy America provisions were satisfied for **all** vehicle(s)”*?

### **Section 3 Post-Delivery Audit, Page 20**

**Question for FTA:** Does FTA agree the following statement should be restated to be consistent with the requirements of the Buy America regulations by removing the reference to a TVM's post-delivery certification, and to emphasize that audit testing needs to focus on Buy America compliant components, not all of the vehicle's components, and to clarify the requirements for certifying Buy America compliance? *"Post-delivery, a manufacturer certifies that the requirements of the Buy America provisions were satisfied for the total vehicle(s) and all of its components, which includes collecting and evaluating suppliers' documentation."*

**Comments:** The Handbook incorrectly states *"Post-delivery, a manufacturer certifies that the requirements of the Buy America provisions were satisfied for the total vehicle(s) and all of its components. . ."*. There is only one certificate of Buy America compliance (or non-compliance) that a manufacturer is required to file for rolling stock procurements. That form of the certificate is found in 49 CFR 661.12. The requirement for filing of the certificate found in 49 CFR 661.13 that states the appropriate must be filed with its bid / offer. There is no requirement for a TVM to provide a post-delivery certification.

In accordance with 49 CFR 661.13, the Manufacturer's Certification of Compliance or Non-Compliance with Buy America for rolling stock purchases is required to be submitted with their bid or offer during the procurement process. Failure to do so would render their bid or offer non-responsive and lead to disqualification from the competition.

#### ***§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.***

**Recommended Wording:** *"For the post-delivery audit, manufacturers must provide the Buy America auditors with documentary evidence to substantiate the domestic content of the components identified by the manufacturer as Buy America compliant. At the post-delivery stage, invoices that reflect the actual prices paid for the items purchased and installed on the vehicle provide an excellent source of documentary evidence. A Vehicle Builder (i.e., term "manufacturer") does not certify "the requirements of the Buy America provisions were satisfied for the ... all of its components"; a Vehicle Builder certifies only those Components containing domestic content."*

### **Section 3.1.1 Post-Delivery Buy America Certification Requirements, Page 21**

**Question for FTA:** Does FTA agree *"The vehicle(s) contain components that **meet or exceed** the required percentage of domestic content, by cost;"* should be changed to *"The vehicle(s) contain components that **exceed** the required percentage of domestic content, by cost;"* to reflect the requirement of the regulations?

### **Section 3.1.1 Post-Delivery Buy America Certification Requirements, Page 21**

**Question for FTA:** Does FTA agree the following statement is redundant because the Handbook states the same sentence twice before on the same page 21, and should be deleted entirely?

*"The review period begins when the rolling stock is delivered to the recipient and ends before the title transfer or before the rolling stock is placed in revenue service, whichever comes first."*

**Comments:** The Handbook states *“The review period begins when the rolling stock is delivered to the recipient and ends before the title transfer or before the rolling stock is placed in revenue service, whichever comes first.”* This is the 3<sup>rd</sup> reference to *“review period”* on page 21 and is unnecessarily redundant.

Please delete the sentence entirely.

### **Section 3.1.1 Post-Delivery Buy America Certification Requirements, Page 22**

**Question for FTA:** Does FTA agree *“if the manufacturer does not provide sufficient information, the recipient must seek additional information”* should be changed to *“The manufacturer must provide sufficient information to allow the Buy America auditor to determine the manufacturer has complied with all applicable requirements of domestic content and final assembly. If the manufacturer does not provide sufficient information to substantiate compliance with domestic content and final assembly requirements, then the manufacturer fails the Buy America audit”*?

**Comment:** *“if the manufacturer does not provide sufficient information, recipient must seek additional information.”* From whom? If the manufacturer does not provide sufficient information, then manufacturer fails the Buy America audit.

### **Section 3.1.2 Documentation for Post-Delivery Buy America Certification, Page 22**

**Question for FTA:** Does FTA agree the following statement should be modified to accurately reference the timing of when the manufacturer’s certificate of compliance or non-compliance is required to be submitted according to the regulations: *“The manufacturer’s certificate of compliance or non-compliance with Buy America rolling stock requirements”*?

**Comments:** The Handbook as written, now for the third time sends a misleading message about the timing of receipt of the TVM’s certificate of compliance or non-compliance, and leaves an impression that the TVM must provide such a certificate at the post-delivery stage. This is not the case, the TVM’s certificate MUST be submitted with its bid / offer. There is no requirement for the TVM to submit a post-delivery Buy America certificate of compliance or non-compliance at the post-delivery stage.

There is only one certificate of Buy America compliance (or non-compliance) that a manufacturer is required to file for rolling stock procurements. That form of the certificate is found in 49 CFR 661.12. The requirement for filing of the certificate is found in 49 CFR 661.13 that states the appropriate must be filed with its bid / offer.

**Recommended Wording:** *“The manufacturer’s certificate of compliance or non-compliance with Buy America rolling stock requirements as submitted by the manufacturer with its bid / offer.”*

### **Section 3.1.2 Documentation for Post-Delivery Buy America Certification, Page 22**

**Question for FTA:** Does FTA agree the 2<sup>nd</sup> bulleted item *“Cost of each component **and corresponding subcomponents**”* should be changed to *“Cost of each component”* to reflect realistic standard industry practice?

**Comments:** The Bullet list at bottom of page states *“manufacturer provides...cost of each subcomponent...”* - this is **not** realistic. The Vehicle Manufacturer does not know and should not know the supplier’s cost of each **subcomponent** as this is proprietary information

**Section 3.1.2 Documentation for Post-Delivery Buy America Certification, Page 22**

**Question for FTA:** Does FTA agree the two bullet points should be modified to reflect the requirements of the regulations, and not to expand the audit requirement beyond the scope of the regulations

- Description of all work performed at the final assembly location; and
- Cost of the work performed at the final assembly location.

**Comments:** The Handbook states the manufacturer provides the “*description of all work performed at the final assembly location*”; and the “*cost of the work performed.*” The regulations set forth the required set of mandatory final assembly activities. Typically, the manufacturer will perform these and many other ‘final assembly activities’ that are in addition those enumerated in Appendix D to §661.11 and associated costs. The auditor’s task is to verify only those final assembly activities listed in the Appendix and no more. Accordingly, the cost of final assembly to be provided by the manufacturer and reviewed by the auditor should likewise be restricted to the costs associated with the activities listed in Appendix D. Final point, the word applicable is inserted in front of activities to recognize that some of the activities listed in Appendix D may not apply (e.g., Rail passenger cars that do not have propulsion systems or propulsion cooling system on board. The scope of final assembly activities would not include the installation and interconnection of the propulsion system).

**Recommended Wording:**

- “*Description of applicable final assembly activities as defined in Appendix D to §661.11— Minimum Requirements for Final Assembly performed at the final assembly location; and*
- *Cost of the applicable final assembly activities per Appendix D to §661.11 performed at the final assembly location.*”

**Section 3.1.2. Documentation for Post-Delivery Buy America Certification, Pages 22-23**

**Comments:** Similar to Vehicle Builders, Component suppliers should be protected from auditors (through Vehicle Builders) attempting to obtain copies of proprietary documentation.

Despite this clear directive, some auditors will continue to pressure Vehicle Builders and Component suppliers to walk away with proprietary costing documents, especially during Pre-Award audits when the “Apparent Successful Proposer” Vehicle Manufacturer doesn’t want to upset their FTA Recipient customer and risk delay of award or being deemed non-complaint.

**Section 3.1.3.1 Verifying Domestic Content, Page 23**

**Question for FTA:** Does FTA agree the following sentence should be restated to reflect “The manufacturers’ worksheets will note any changes in component suppliers and component percent domestic content, by cost.”



**Comments:** *“Note any changes in suppliers and in domestic content percentage”* – changes from what? The statement presumes a point of reference that may or may not exist and may or may not be available to the auditor conducting the Post-Delivery Audit. The manufacturer’s Buy America Post-Delivery domestic content worksheet must reflect information as built. If the Post-Delivery auditor did not conduct the Pre-Award audit, (and does not have access to such Pre-Award audit information), how would the auditor identify what was a ‘change’? What are the changes the Handbook is referring to specifically? The Post-Delivery auditor does not have a baseline from which to identify and track changes. Also ‘some auditors ...’ this is good advice for a Pre-Award audit; and interim audits; however would only apply to Buy America Post-Delivery audits if more than one Buy America Post-Delivery is completed by the same auditor. Typically, the auditor will obtain the as-built bill of material from the manufacturer as the starting point for the Post-Delivery audit. The auditor should inquire and gain confirmation that the post-delivery bill of material does indeed contain all changes to components and subcomponents, and additionally should confirm that the manufacturer’s domestic content worksheet reflects all changes to suppliers as well as components and subcomponents.

**Recommended Action:** Delete the sentence: *“The manufacturers’ worksheets will note any changes in component suppliers and component percent domestic content, by cost.”*

#### **Section 3.1.3.1 Verifying Domestic Content, Page 23**

**Question for FTA::** Does FTA agree the word “should” replace the word ‘*may*’ in the following sentence to reflect a most reliable, effective and time honored audit technique for testing and verifying costs: *“Auditors may validate manufacturers’ worksheets by reviewing paid invoices, purchase orders, or other source documents. Auditors may link the costs presented by the manufacturer to the specific source documents”*?

**Comments:** Change “*may*” to “*should*” because testing source documents is the auditor’s fundamental, reliable and proven method of verification of costs in any kind of audit, and hence the verification of Buy America domestic content compliance. “*May*” suggests there are other alternatives for cost verification, however, no alternative testing methods are put forward in the Handbook.

**Recommended Wording:** *“Auditors should validate manufacturers’ worksheets by reviewing paid invoices, purchase orders, or other source documents. Auditors should link the costs presented by the manufacturer to the specific source documents.”*

#### **Section 3.1.3.1 Verifying Domestic Content, Page 23**

**Question for FTA:** Does FTA agree the following sentences should be restated to bring the appropriate context to the intended guidance:  
*“The manufacturers’ worksheets will note any changes in component suppliers and component percent domestic content, by cost”*?  
*“Some auditors find it useful to add a column to the domestic content worksheet and track costs associated with specific paid invoices or purchase orders so they can more easily monitor changes over time”*?

**Comments:** In a post-delivery audit situation, the auditor will typically conduct one post-delivery audit for an order of like vehicles. If the order is produced in multiple production lots that span a significant amount of time, the auditor may conduct a separate post-delivery audit for each production lot. In that case, there is an opportunity to monitor changes over time. However, for a one-time post-delivery audit, that opportunity does not exist. Without a baseline starting point, you cannot identify or monitor changes over time. Without being engaged in the project from the beginning of production and tracking throughout the build, the Buy America auditor cannot monitor changes over time.

**Recommended Wording:** *“In preparing for and conducting the Buy America Post-Delivery audit, the auditor should confirm with the manufacturer that the post-delivery bill of material and the domestic content worksheet encompass all changes that may impact Buy America compliance. This would include substitutions of components and/or subcomponents, changes in cost of components and subcomponents and changes or substitutions in suppliers. The auditor should cross-check and verify change orders affecting components and subcomponents with the Transit Authority.”*

**Section 3.1.3.2. Components with Domestic Content Percentages Close to the Minimum Threshold, Page 24**

**Comment:** During both a Pre-Award and a Post-Delivery audit, auditors should direct specific attention to a Vehicle Builder’s internal domestic-manufactured and foreign-manufactured components to insure all manufacturing costs are included and profit, administrative and overhead costs are attributed consistently.

**Section 3.1.3.2. Components with Domestic Content Percentages Close to the Minimum Threshold, Page 24**

**Question for FTA:** Does FTA agree the following sentence should be modified to provide guidance regarding the evaluation of supplier’s compliance with Buy America requirements: *“As discussed in Section 2 Pre-Award Audit, auditors may also need to examine component suppliers to evaluate whether or not the suppliers have satisfied Buy America requirements”*?

**Comments:** The Handbook states: *“Auditors may need to examine component suppliers. . .”* – what should be done in these situations? Handbook goes on to reference: *“as discussed in Section 2 Pre-Award Audit ...”* – There is no such discussion in Section 2. Delete this or correct the reference (although we do not recall seeing such a discussion in the Handbook).

**Recommended Wording:** *“The Auditor needs to determine if a review of selected component supplier(s) to evaluate whether the suppliers’ components do indeed comply with Buy America requirements, is warranted by the circumstances. This consideration takes on even greater significance as the push to exceed the new phased-in domestic content increases come into play. Major components with high domestic content percentage values may require added scrutiny to confirm the domestic content requirements are met and the manufacturing (substantial transformation) does indeed take place in the US.”*

**Section 3.1.3.2. Components with Domestic Content Percentages Close to the Minimum Threshold, Page 24**

**Question for FTA:** Does FTA agree the following statement should be modified to emphasize the importance of reviewing change orders: *“Change orders and errors (even to smaller value components) could potentially slip the total domestic content percentage below the requirements”*?

**Recommended Wording:** Add the following sentence to close the second paragraph of 3.1.3.2: “The Auditor should analyze all change orders to determine their impact on Buy America compliance”.

**Section 3.1.3.2. Components with Domestic Content Percentages Close to the Minimum Threshold, Page 24**

**Question for FTA:** Does FTA agree the following sentence needs to be deleted, because there is no reference in Section 2 about Buy America auditors examining component suppliers: “As discussed in Section 2 Pre-Award Audit, auditors may also need to examine component suppliers to evaluate whether or not the suppliers have satisfied Buy America requirements”?

**Recommended Change:** Delete the sentence entirely.

**Section 3.1.3.3. Reasonableness of Component and Subcomponent Costs, Page 24**

**Question for FTA:** If “comparable vehicle procurement costs” are proprietary or not available (e.g., new Vehicle Builder), how can an auditor compare them?

**Comments:** Where does auditor obtain “comparable vehicle costs”? This situation would apply in a pre-award audit scenario where the TVM provides a Bill of Material of a similarly configured vehicle.

Is a Vehicle Builder now expected to show an auditor their other (proprietary) vehicle costs?

If an auditor has a Vehicle Builder’s competitor’s costs and challenges the Vehicle Builder, there may be many reasons why competing Vehicle Builders pay a different price to the same Component supplier (e.g., win-win, “buy” a contract, multi-year frame agreement, multiple Components discount, payment terms/history, etc.).

**Section 3.1.3.4. Verification of U.S. Final Assembly, Page 24**

**Question for FTA:** What specific “overhead costs” must a Recipient’s auditor review and why are they required if the direct labor cost is confirmed and reasonable?

**Comment:** Overhead costs have no bearing on final assembly activities and both Vehicle Builders and Component suppliers should be careful not to divulge too much overhead cost information that enables the auditor to calculate the overall profit/loss.

**Section 3.1.3.4. Verification of U.S. Final Assembly, Page 24**

**Question for FTA:** Does FTA agree the following (third) bullet point should be modified to focus the testing of final assembly cost on relevant cost factors as set forth in the regulations: “The total cost of final assembly, including labor and overhead costs”?

**Comment:** Auditors do not need to know or review Overhead costs for Final Assembly testing.

**Recommended Wording:** “The cost of final assembly direct labor required to accomplish the applicable activities of final assembly listed in Appendix D - to §661.11—Minimum Requirements for Final Assembly.”

**Section 3.1.3.4. Verification of U.S. Final Assembly, Page 24**

**Question for FTA:** Does FTA agree the following sentence should be modified to focus the testing of domestic content calculations to confirm domestic content exceeds the required minimum percentage as set forth in the regulations: *“Auditors will verify that the manufacturer is accounting for all components in its domestic content calculation and that all components and subcomponents are properly classified”*?

**Comments:** *“Auditor will verify manufacturer is accounting for all components in ...”* The auditor’s first step should be to determine that total material cost of the vehicle is accurately stated by the TVM as this is the baseline to which the domestic content percentage is applied. Replace with ‘will confirm total material cost of the vehicle’ – audit does not need to account for all components in the manufacturer’s Domestic Content calculation, manufacturer’s Domestic Content calculation is no more than an indicator. This is not an audit of the TVM’s cost accounting system, it is a verification of domestic content. Auditor needs to stay focused on its sole mission – verify Domestic Content exceeds required percentage, and verify final assembly compliance. It is incumbent upon the Buy America auditor to audit components and subcomponents to exceed the Domestic Content requirement of > 60%, 65%, 70%. It is **not** the auditor’s duty or requirement to determine **all** components and subcomponents are properly classified. Such efforts waste time and money and do **not** add value to the Buy America audit process.

**Recommended Wording:** *“Auditors will verify total material cost of the vehicle is accurately stated by the vehicle manufacturer, and will confirm that all components and subcomponents counted in the auditor’s verification of domestic content are properly classified.”*

**Section 3.1.3.4. Verification of U.S. Final Assembly, Page 25**

**Question for FTA:** Does FTA agree the following sentence be modified to address the situation typically encountered by the auditor: *“This may be accomplished by reviewing the Resident Inspector Report, only when such a report is required”*?

**Comment:** Inspector’s Report is typically not completed and not available to the Buy America auditor by the time the audit report is due.

**Recommended Wording:** *“This verification can be achieved through the auditor’s direct personal observation both of these techniques. This may be accomplished by reviewing the Resident Inspector Report, only when such a report is required, complete and made available to the auditor before the completion of the Buy America Post-Delivery Audit.”*

**Section 3.1.3.4. Verification of U.S. Final Assembly, Page 25**

**Question for FTA:** Does FTA agree the bullet point list should be added the following bullet points: *“On-site observation”* and *“Interview the Resident Inspector”*?

**Comments:** The scope of final assembly activities may vary from manufacturer to manufacturer and even from vehicle to vehicle. During a post-delivery audit, auditors will review the manufacturer’s activities and verify that the manufacturer performed the final assembly activities in the U.S. An auditor may verify compliance through a variety of methods at the post-delivery stage, including, but not limited to:

- Reviewing the manufacturer’s flow chart(s) of the production work station;
- Work instructions;
- QC/QA inspections (hold points);
- Manufacturing plans;
- Assembly drawings (as would be kept or posted on a shop floor);
- ***On-site observation; and***
- ***Interview the Resident Inspector.***

**Comments:** The Handbook states this may be accomplished by reviewing the Resident Inspector Report; however that can only be done when such a report is required, contains the information needed and is made available to the auditor on a timely basis – that occurs before the completion of the Buy America Post-Delivery Audit.

§663.37 Post-delivery purchaser's requirements certification requires the following of the resident inspector:

1. Resident Inspector must be present at the manufacturing site throughout the period of manufacture;
2. Resident Inspector must monitor the manufacturing of the rolling stock; and
3. Resident Inspector must complete a report on the manufacture of such rolling stock.

A Resident Inspector is not required for procurements of:

1. Ten or fewer buses; or
2. Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or
3. Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.

**Recommended Wording:** Add the following two items to the bullet point list:

- *“On-site observation; and*
- *Interview the Resident Inspector.”*

#### **Section 3.1.3.4. Verification of U.S. Final Assembly, Page 25**

**Question for FTA:** Does FTA agree the following sentence should be modified to address the requisite due diligence underlying the auditor’s attestation that final assembly activities comply with the Buy America requirements: *“Site visits may be merited if a final assembly facility is new or if there are concerns about the manufacturer’s capacity”?*

**Comments:** The Buy America audit is required to attest to three items of final assembly at the pre-award stage and at the post-delivery stage:

1. Location of final assembly is in the US.
2. Activities of final assembly
3. Cost of final assembly is reported by TVM.

The only difference between the pre-award and post-delivery is that the pre- is based on the forecasted or planned status and the post is based on actual occurrence. The Buy America auditor must apply the appropriate level of due diligence necessary in the circumstances to support his/her conclusion that the TVM in compliance or not in compliance. Site visits and in-person observations provide the most reliable and accurate level of diligence, and should always be the auditor's first choice. To state in the guidance document that "*Site visits may be merited if a final assembly facility is new*" diminishes and denigrates the importance of final assembly. The auditor should affirmatively confirm the location, set of activities and cost of final assembly; not merely 'mail it in' or only make a site visit because the facility is new. This short changes the entire point of the review of final assembly. The Handbook also states in this section discussing Post-Delivery Audit guidance that a site visit may be merited "*if there are concerns about the manufacturer's capacity*". This is misguided guidance. If you have waited to address concerns about the manufacturer's capacity until the post-delivery audit stage, you have waited far too long. Perhaps this is another reason you want to do an in-person site visit at the pre-award stage or as part of the pre-award responsibility determination required by 4220.1F and by the Buy America Pre-Award Purchaser's Requirements certification. In not so rare instances, a TVM may become insolvent or suffer some other form of trauma after award (and after you have affirmed they were a responsible vendor) that renders them incapable of performing the contract. In these instances, concerns would indeed arise at the post-delivery stage, and your problem is not necessarily about Buy America but whether or not your railcar or bus order will be completed.

In the event an on-site inspector is not required by 49 CFR § 663.37, recipients must consider whether auditor(s) should make on-site visits to verify final assembly activities.

**Recommended Wording:** "*The Buy America auditor must apply the appropriate level of due diligence necessary in the circumstances to support his/her conclusion that the vehicle manufacturer is in compliance with final assembly requirements. Site visits and in-person observations provide the most reliable and accurate level of diligence, and should always be the auditor's first choice.*"

#### **Section 3.1.3.4. Verification of U.S. Final Assembly, Page 25**

**Question for FTA:** Does FTA agree the references to cost of final assembly should be consistent throughout the Handbook?

**Comments:** The Handbook states "*total cost of final assembly*" - total cost of final assembly is not defined anywhere in the Handbook. The requirement calls for the manufacturer to disclose the cost of final assembly; and the auditor's task is to determine if the cost represented by the manufacturer represents the direct labor costs associated with the minimum final assembly activities as spelled out in Appendix D. This analysis does not need to be overcomplicated. It does not need to review direct labor overhead; it should focus strictly on direct labor costs and how direct labor costs were derived. Typically, that would consider the hourly rates of those classifications that are involved any of the FTA-defined final assembly activities, the number of hours of direct labor expended on those efforts, and the work stations from where those hours are incurred. This should provide the auditor with sufficient reliable information to analyze whether the manufacturer's cost of final assembly encompasses all of the applicable final assembly activities outlined in Appendix D for the particular vehicle undergoing the audit. That is enough to analyze Final Assembly costs. There is no reason to analyze overhead when a direct labor analysis will get the job done. The information provided should be commensurate with the labor actually employed for final assembly (i.e., final assembly being defined as the minimum required activities as set forth by the FTA). In 22 years, we have never seen a railcar, bus or ferryboat TVM whose cost accounting system or work station activities mirrors the FTA list of Final Assembly activities.

**Recommended Wording:** *“The vehicle manufacturer is required to report final assembly cost. The auditor’s task is to determine if the cost represented by the manufacturer represents the direct labor costs associated with the minimum final assembly activities as set forth in Appendix D. The information provided should be encompass the direct labor actually employed for final assembly activities.”*

**Section 3.1.3.4. Verification of U.S. Final Assembly, Page 25**

**Comments:** Final assembly activities and costs should be verified on-site.

Who’s included in “supervisory personnel” (e.g., Program Manager? Shop Foreman? QA/QC?)?

**Section 3.1.3.5. Supplier Buy America Certificate Documentation for Buy America Certification at Post-Delivery, Page 26**

**Question for FTA:** What “specified standards” must Component suppliers verify its Subcomponent conform to?

**Section 3.1.3.6. Post-Delivery Domestic Content Monitoring, Pages 26-27**

**Comments:** FTA’s recommended best practice of Intermediate Audits can help prevent potential non-compliance while there’s still time to correct deficiencies.

Often, the Resident Inspector has little/no expertise in Buy America and shouldn’t/doesn’t have access to the Vehicle Builder’s costs of Components and Subcomponents.

Since the Buy America Auditor has little/no technical expertise as a Resident Inspector and the qualifications/expertise for both positions are very different, it’s simply unrealistic to presume the same person can properly perform the critical duties of both positions.

**3.1.3.5 Supplier Buy America Certificate Documentation for Buy America Certification at Post-Delivery, Page 26**

**Question for FTA:** Does FTA agree the following sentence should be augmented to provide examples of “sufficient documentation”: *“Suppliers must provide sufficient documentation to manufacturers that demonstrates compliance with post-delivery audit requirements”*?

**Comments:** Section 3.1.3.5 states suppliers must provide “sufficient documentation” to TVM to demonstrate compliance with Buy America requirements. What is sufficient documentation? The Handbook needs to give some general parameters defining what expectations are for sufficient documentation.

The Supplier Buy America Certificate offers an excellent means of providing sufficient documentation to establish compliance with Buy America requirements. A ‘proper’ supplier certificate will contain the following information:

- Name of Supplier
- Name/description and part number of the item being supplied.
- Manufacturing Location (city, state, country)
- Percentage of US Content in the item being supplied.
- Percentage of Non-US Content in the item being supplied.
- Certification attestation signed and dated by an authorized employee of the supplier’s company.

**3.1.3.5 Supplier Buy America Certificate Documentation for Buy America Certification at Post-Delivery, Page 26**

**Question for FTA:** Does FTA agree the phrase “(and ideally for each subcomponent)” should be stricken from the Handbook?

**Comments:** 3.1.3.5 Manufacturers will conduct due diligence (FAI, site visits, etc.) when documenting the component supplier’s manufacturing location and “*ideally for each subcomponent.*” - What does the FTA envision to be the appropriate set of tasks and level of effort required for a manufacturer to determine the supplier’s manufacturing locations of the subcomponents that comprise the supplier’s component? Is this necessary? Is this realistic? What exactly is supposed to be accomplished? The ideal expectation that TVMs will conduct due diligence to document the manufacturing locations of their supplier’s subcomponents would take a year or longer for a railcar build. This is totally unrealistic and does not belong in the Handbook. The expectation needs to be stated in such a way that it reflects reality (i.e., the TVM should conduct due diligence of its major component suppliers to confirm their Buy America compliance; Domestic Content and not just manufacturing location).

**Recommended Wording:** “*Manufacturers may conduct due diligence when documenting the location of a supplier’s manufacturing facility for each component.*”

**3.1.3.5 Supplier Buy America Certificate Documentation for Buy America Certification at Post-Delivery, Page 26**

**Question for FTA:** Does FTA agree the following sentence needs to be modified to clarify its intent: “*Component suppliers executing the certificate have additional responsibility to verify that subcomponents conform to specified standards*”?

**Comments:** Section 3.1.3.5 states “*Component suppliers executing the Buy America supplier certificate have additional responsibility to verify that subcomponents conform to specified standards.*” – What are the specified standards? Where are they specified? Does the Handbook statement refer to the technical standards of the subcomponents or does it refer to the Buy America standards? TVMs have technical and quality requirements and should select only those suppliers whose products meet the TVM’s standards. TVMs may also require Buy America compliance as one of their standards. What does the Handbook statement have to do with Buy America compliance? Is it placing a new burden on the TVMs? Is it implying TVMs need to conduct mini-Buy America audits to verify subcomponents conform to Buy America requirements?

**Recommended Wording:** “*Component suppliers executing the certificates must maintain adequate documentation to substantiate their attestations and always be prepared to demonstrate compliance with Buy America requirements in the event the Transit Authority elects to verify their Buy America status.*”

**3.1.3.6 Post-Delivery Domestic Content Monitoring, Page 26**

**Question for FTA:** Does FTA agree the Section 3.1.3.6 should the following sentence be modified to reflect that Post-Delivery Domestic Content Monitoring should be performed by a qualified Buy America auditor: “*The resident inspector, or an agent or employee of the recipient, would perform the Post-Delivery Domestic Content Monitoring. The purpose of the Post-Delivery Domestic Content Monitoring is to ensure that all vehicles after the first vehicle are compliant with the regulations*”?



**Comments:** According to the Handbook, the Resident inspector would perform domestic content monitoring aka interim aka intermediate reviews to ensure that all vehicles after the first are compliant with the regulations. BoMs held closely and typically not shared with Resident Inspector nor is the cost of components and/or subcomponents shared with RIs. Inspectors should be on the assembly line monitoring the TVM's adherence to contract technical specifications and the TVM's adherence to its own QA program and manufacturing specifications, and take note of discrepancies. The Inspector should not be camped out in the accounts payable department looking at invoices. Brain surgery should only be done by brain surgeons. Leave the inspection to the inspectors and leave the auditing to the auditors. The inspectors typically are not privy to the Bill of Materials, cost of components and subcomponents, and are not trained or experienced at Buy America auditing. The list of bullet points includes nearly everything that a Buy America auditor would analyze and review in performing the Buy America Post-Delivery audit. So why would you now have the Resident Inspector perform those functions? If the Resident Inspector is duly qualified, experienced, capable and competent at Buy America auditing, then why have a "qualified" Buy America auditor. The bullet point list implies that the Resident Inspector can handle virtually everything the Buy America auditor needs to do to complete the audit, and that sends the wrong message.

**Recommended Wording:** *"In those situations where interim monitoring of domestic content may be necessary (e.g., change orders affecting components, large quantity production runs, supplier substitutions, long duration builds), interim monitoring should be completed by a qualified Buy America auditor."*

#### **3.1.3.6 Post-Delivery Domestic Content Monitoring, Page 27**

**Question for FTA:** Does FTA agree the section header for 3.1.3.6 *Post-Delivery Domestic Content Monitoring* should be changed to reflect final assembly?

**Comment:** The list of bullet points includes Final Assembly; accordingly Final assembly should be included in the section header:

**Recommended Wording:** *"3.1.3.6 Post-Delivery Domestic Content and Final Assembly Monitoring"*

#### **3.1.3.6 Post-Delivery Domestic Content Monitoring, Page 27**

**Question for FTA:** Does FTA agree the following sentence should be modified to address the gravity of the situation depicted in the Handbook: *"If the manufacturer is unable or unwilling to comply with Buy America on the production vehicles, the recipient should contact its Regional Office regarding the non-compliance"*?

**Comments:** If the manufacturer is unable or unwilling to comply with Buy America, then manufacturer fails the Buy America audit; and they are in breach of contract. This would jeopardize FTA funding, disqualify the manufacturer and possibly cancel the project. Ostensibly, this is one of many reasons the FTA requires a Buy America Pre-award audit.

**Recommended Wording:** *"If the manufacturer is unable or unwilling to comply with Buy America, then manufacturer fails the Buy America audit. The Buy America auditor, if so authorized, may offer the manufacturer a final opportunity to provide the information demonstrating compliance with Buy America. Failing that, the Buy America auditor should immediately complete the audit report and immediately notify the transit authority's appropriate officials who will deem an appropriate course of action."*

### ***3.2.1 Post-Delivery Purchaser's Requirements Certification Requirements, Page 28***

**Question for FTA:** Does FTA agree all instances referring to the duration of the Resident Inspector's presence at the manufacturing site should be harmonized and consistent throughout the Handbook?

**Comments:** Handbook states on page 28 three different things regarding the Resident Inspector's whereabouts during the manufacture of the vehicles:

1. ". . . Recipients are required to have an ***on-site resident inspector at the manufacturing site throughout the manufacturing period.***"
2. "***Remain full-time at, or periodically visit, the final assembly location during the period of manufacture;*** "
3. ". . . ***the resident inspector may visit component manufacturing sites, as necessary, during the period of manufacture of the rolling stock.***"

The regulations are clear and require the Resident Inspector to be inspecting the vehicles at the manufacturing site throughout the manufacturing period.

How can the Resident Inspector perform the required duties of inspecting the vehicles at the manufacturing site throughout the manufacturing period when they only periodically visit during the period of manufacture?

How can the Resident Inspector perform the required duties of inspecting the vehicles at the manufacturing site throughout the manufacturing period when are off visiting component manufacturing sites? – How can the Resident Inspector be present at the TVM's facility during the "*period of manufacture*" if Resident Inspector is visiting component manufacturer sites? Does the Auditor notify the TVM to stop production while the Resident Inspector visits the traction motor builder for three or four days?

The duty of the inspector (be it a single inspector or a crew of inspectors) is to inspect vehicles during production, and to observe and report that the transit vehicle manufacturer is indeed building the vehicles according to the transit authority's specifications. They are typically fully occupied with these activities throughout the period of manufacture. They are typically not qualified and not available and not deployed to visit component suppliers to assess the Buy America compliance of the suppliers. Likewise, they are typically not qualified and not available and not deployed to monitor domestic content throughout the period of manufacture. In short, they are not the surrogate front line Buy America auditor and hence none of the roles and responsibilities of the Buy America auditor should be foisted upon them nor should they be expected to fulfill that role. They can support certain Buy America monitoring functions that directly occur on the manufacturing plant floor in their presence. They typically do not and should not have authority or access to review Bills of Material, invoices, purchase orders, quotes or other confidential records that detail and support the costs of building a vehicle. If there is a need to visit component suppliers for the purpose of determining the supplier's compliance with Buy America, the Buy America auditor is the person for that job.

Remain full-time at or periodically visit the final assembly location during the period of manufacture; and visit the component suppliers or be present at the manufacturing site throughout the period of manufacture; which is it?

The regulations state the resident inspector was at the manufacturing site throughout the period of manufacture: §663.37 Post-delivery purchaser's requirements certification.

For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—

- (b) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock.

**Recommended Wording:** The following replaces the first paragraph, the first two bullet points and the second paragraph at the top to page 28:

*“With certain exceptions described below, recipients are required to have an on-site resident inspector at the manufacturing site throughout the manufacturing period. The resident inspector must be an employee or contractor of the transit authority and not an agent or employee of the transit vehicle manufacturer. The Resident Inspector:*

- *The resident inspector must be at the manufacturing site throughout the period of manufacture of the rolling stock*
- *The role of the resident inspector is to monitor the manufacture of and to complete a report on the manufacture of the transit vehicles.*
- *The resident inspector should visually inspect the vehicles, may participate in, and observe performance tests of the vehicles.”*

### **3.2.2 Required Purchaser’s Requirements Documentation at Post-Delivery, Page 28-29**

**Question for FTA:** Does FTA agree the following bullet point should be added to the list of bullet point’s review of the Resident Inspector’s Report?

**Comment:** The review of the Resident Inspector’s Report is specifically required by 49 CFR 663.7(b)

**Recommended Wording:** *“The recipient’s review of the Resident Inspector’s Report.”*

### **3.2.3.1 Assignment of Resident Inspector to Manufacturing/Final Assembly Site, Page 29**

**Question for FTA:** Does FTA agree all instances referring to the duration of the Resident Inspector’s presence at the manufacturing site should be harmonized and consistent throughout the Handbook?

**Comments:** Another instance is found on page 29 where Handbook states: *“It is not meant to require that a resident inspector remain “full-time” at the manufacturer’s site throughout the period of manufacture.* Although this may be recommended for some vehicle procurements, the resident inspector requirements may be fulfilled with periodic visits.” This contradicts the language of the regulation cited above, and accordingly would require a change to the regulation clarify what *“throughout the period of manufacture”* really means, and to assert in the Handbook that periodic visits fulfill the resident inspector requirements. This is inconsistent with pages 25, 27, 28, 29, 30.

**Recommended Wording:** *“The intent of the regulation is to help recipients verify that the vehicles will comply with its contract specifications. The regulation, 49 CFR 663.7(a) requires the recipient to certify a resident inspector was at the manufacturer’s site throughout the period of manufacture.”*

### **3.2.3.2 Resident Inspector’s Report for Purchaser’s Requirements at Post-Delivery, Page 29**

**Question for FTA:** Does FTA agree the phrase *“inspection qualification”* contained in the first bullet needs to be clearly described to be fully understood what is intended here?

**Comments:** We're not clear regarding the message that is being conveyed here – is it the qualifications of the recipient's resident inspector? Is the qualification of the components through some sort of FAI process or what?

**Question for FTA:** Will FTA please explain what is meant by the term "*inspection qualification*".

**3.2.3.2 Resident Inspector's Report for Purchaser's Requirements at Post-Delivery, Page 30**

**Question for FTA:** Does FTA agree the 3rd bullet should be modified to include only what is required by the Buy America regulations?

**Comments:** The context here is a series of bullet points of best practices for the contents of the Resident Inspector's Report. The 3rd bullet states: "*A summary describing how the manufacturer adequately implemented its QC processes throughout the manufacturing process. The summary would also address how the manufacturer adhered to appropriate FTA elements of quality.<sup>1</sup> For example, a sample Closed Nonconformance Report would be included that identifies any corrective rework/repairs that were made and approved by the recipient or its designated representative. Note that nonconforming material that was repaired (that is, not fully conforming to OEM/specification requirements), or that is permitted to be used "as is" must be approved by the recipient.*"

The footnote links to the FTA Quality Management System Guidelines. The guideline apply to "*Major Capital Projects*" and the definition of Major Capital Projects categorically excludes a project that are "*exclusively for the routine acquisition, maintenance, or rehabilitation of vehicles or other rolling stock;*" (Definitions p 1-4). That would indicate the reference is not applicable to rolling stock purchases, and hence should be removed from the Handbook.

**Recommended Wording** (for 3<sup>rd</sup> bullet): "*A summary describing how the manufacturer adequately implemented its QC processes throughout the manufacturing process.*"

**3.2.3.2 Resident Inspector's Report for Purchaser's Requirements at Post-Delivery, Page 30**

**Question for FTA:** Does FTA agree the last sentence of the last bullet point should be modified to include only what is what is required by the Buy America regulation. The sentence states "*Any elements that do not meet specification requirements must be accompanied by a contract modification approved by the recipient and identified in the Resident Inspector's Report summary.*"

**Comments:** The Resident Inspector's Report is not intended to be receptacle for contract modification/change order documentation. Another new role for the Resident Inspector that further detracts from the Resident Inspector's core mission surfaces with this practice, as the inspector is not the contract manager.

**Recommended Wording:** "*The Resident Inspector's Report should identify any elements that do not meet specifications and the report should reflect the final disposition/resolution of those items.*"

#### **Section 4. Domestic Content Calculations, Page 32**

**Comments:** It's not clear what the terms "vendors" and "agents" mean.

It's ironic that FTA states "*This calculation is not consistent with 49 CFR § 661.11 and fails to demonstrate compliance*" (i.e., *calculating the domestic content amount by dividing the total costs of the domestic components by the estimated value of the vehicle...*) when this Handbook's 4.3.1. Domestic Content Worksheets Instructions lists a Component's manufacturing costs as if it should be included in the domestic (or foreign) content calculation of the Component's sum total Subcomponents.

#### **Section 4. Domestic Content Calculations, Page 32**

**Question for FTA:** Does FTA agree the phrase needs to be modified to include a cross-reference that identifies where in the Handbook this clarification is made: "*...offers clarification on how to determine what is a component versus what is a subcomponent for rolling stock*"? Alternatively, if no reference information exists, does the FTA agree that it should be developed and inserted into the Handbook? If not, the phrase should be deleted.

**Comments:** Domestic Content calculations – where is the "*clarification on component vs subcomponent*"? There should be a specific cross reference here. However, we did not locate any place in the document that provides this most important clarification.

**Question for FTA:** Does FTA agree to either add "*clarification on component vs subcomponent*" or delete the phrase?

#### **Section 4. Domestic Content Calculations, Page 32**

**Question for FTA:** Does FTA agree the following phrase should be modified: "*Section 4.3.3 provides guidance to calculate the Vehicle Material Total Cost*"? Alternatively, if there is no such guidance information in the Handbook, does the FTA agree that guidance to calculate Total Material Cost should be developed and inserted into the Handbook? If not, the phrase should be deleted.

**Comment:** There is no section 4.3.3 in the Handbook.

**Recommended Wording:** "*Vehicle Total Material Cost represents the total material cost of the vehicle, and is the sum of all component costs of the vehicle. Vehicle Total Material Cost is the proper value that must be used in calculating the percentage of domestic content of the vehicle consistent with 49 CFR § 661.11. Vehicle Total Material Cost is the denominator in the domestic content percentage calculation; and Domestic Content cost is the numerator.*"

#### **Section 4.1. Vehicle Level Domestic Content Calculations, a), Page 33**

**Question for FTA:** Does FTA agree "*The rolling stock manufacturer must demonstrate that the cost of components produced in the U.S. is **equal to or** more than the required minimum percentage of the cost of all components on the vehicle*" should be changed to "*The rolling stock manufacturer must demonstrate that the cost of components produced in the U.S. is **more than** the required minimum percentage of the cost of all components on the vehicle*"?

#### **Section 4.2. Domestic Content – Relevant Definitions, Page 33**

**Question for FTA:** Does FTA agree “For vehicle components to be considered domestic, the subcomponents, by cost, **must be the required minimum** percentage of domestic origin...” should be changed to “For vehicle components to be considered domestic, **more than** the required minimum percentage of the subcomponents, by cost, must be U.S.-manufactured”?

#### **Section 4.1. Vehicle Level Domestic Content Calculations b), Page 33**

**Question for FTA:** Does FTA agree (b) “If a component contains less than the minimum domestic content percentage, i.e., is of foreign origin, then the manufacturer only receives domestic credit for those subcomponents manufactured in the U.S.” should be changed to “If a component is manufactured in the United States, but contains less than the required percentage of domestic subcomponents, by cost, the component may qualify for partial credit. The amount of partial credit that may be included in the calculation of the domestic content of the component is equal to the cost of the domestic subcomponents plus the cost of US manufacturing of the component”?

#### **Section 4.2. Domestic Content – Relevant Definitions, Page 33**

**Question for FTA:** Does FTA agree “For vehicle components to be considered domestic, the subcomponents, by cost, must be the required minimum percentage of domestic origin...” should be changed to “For **a vehicle component** to be considered domestic, **more than** the required percentage of the subcomponents of that component, by cost, must be of domestic origin ...”?

#### **Section 4.2.1. Component/Subcomponent, Page 33**

**Comment:** Many Component suppliers are unaware that a Component’s requirement for domestic subcomponents must be ahead of the Vehicle Builder’s production/delivery schedule in order to match the Vehicle Builder’s Buy America phased increase for domestic Components.

#### **Section 4.2.1. Component/Subcomponent, Page 33**

**Question for FTA:** Does FTA agree the following sentence should be modified to clarify the reference to the items listed in 49 CFR § 661.11(t), (u), and (v) as “components”: “Also, 49 CFR § 661.11(t), (u), and (v) list specific components that make-up train control (t), communication equipment (u), and traction power equipment (v)”?

**Comments:** The Handbook mistakenly refers to the items listed in 49 CFR § 661.11(t), (u), and (v) as “components”. This not an accurate correct characterization as (t), (u), and (v) are referred to in the regulation as “equipment” (train control equipment, communication equipment, and traction power equipment. Some of this equipment may or may not be components. FTA’s 9-1-2016 policy guidance does **not** refer to (t), (u), and (v) as components but as equipment. Accordingly, the reference to this equipment as “components” needs to be corrected.

**Recommended Wording:** “Also, 49 CFR § 661.11(t), (u), and (v) list specific rolling stock equipment that make-up train control equipment (t), communication equipment (u), and traction power equipment (v).”

#### **Section 4.2.2. List of Typical Components, Page 36**

**Question for FTA:** Does FTA agree FTA should change the term “supersede” “to “conflicts with” because FTA’s Buy America regulations and decisions supersedes an outside organization’s potential component/subcomponent designations?

### **Section 4.2.3. Calculating Costs of Components and Subcomponents, Page 37**

**Question for FTA:** Does FTA agree the paragraph should be expanded to reiterate the two-part test for determining Buy America compliance for components and subcomponents?

**Comment:** A brief mention of the fundamental two-part test for rolling stock compliance enhances the guidance of this section and should emphasize the aggregate cost of subcomponents must equal more than 60%, 65%, 70% **before** considering manufacturing costs.

**Recommended Wording:** *“The analysis of compliance of rolling stock components and subcomponents is comprised of a fundamental two-part test:*

1. *Does the domestic content of the component exceed the minimum required threshold (i.e., 60%, 65% and 70%)?*
2. *Is the component manufactured in the US?*

*All Buy America compliant components must meet both parts of the test. The aggregate cost of subcomponents must exceed the minimum required threshold (i.e., 60%, 65% and 70%) **before** considering manufacturing costs. The auditor’s testing, calculations and analysis flow from here.”*

### **Section 4.2.4. Final Assembly, Page 37**

**Comment:** FTA’s term “truck” is actually the “truck frame” as listed in the next sentence of the same paragraph.

### **Section 4.2.4. Final Assembly, Page 37**

**Question for FTA:** Does FTA agree the Handbook needs to provide additional guidance and clarification of the definition of a component?

**Comments:** The Handbook states: *“Therefore, each item installed directly onto the car body is a component”* in reference to the vehicle body. The Handbook states: *“Therefore, each item installed directly onto the truck is a component”* in reference to the railcar truck. The Handbook states: *“The same rationale is applied for other equipment, such as propulsion equipment and communication equipment. In each case, the individual items that are installed on the vehicle are components.”* The Handbook takes a little too much arbitrary editorial license here resulting in further complication of the guidance. The Handbook omits the *“end product”* from its discussion and this is a critical matter and it also omits the phrase *“at the final assembly location”*. The definition in the regulations 661.3 states: *“Component means any article, material, or supply, whether manufactured or unmanufactured, that is **directly incorporated into the end product at the final assembly location.**”*

*End product means any vehicle, structure, product, article, material, supply, or system, which directly incorporates constituent components at the final assembly location, that is acquired for public use under a federally-funded third-party contract, and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s). A list of representative end products is included at Appendix A to this section.*

#### *Appendix A to §661.3—End Products*

*The following is a list of representative end products that are subject to the requirements of Buy America. This list is representative, not exhaustive.*

*(1) Rolling stock end products: All individual items identified as rolling stock in §661.3 (e.g., buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, as well as vehicles used for support services); train control, communication, and traction power equipment that meets the definition of end product at §661.3 (e.g., a communication or traction power system, including manufactured bimetallic power rail).*

A camera surveillance systems present a somewhat different problem. Using the example of a 40ft bus equipped with a DVR, eight separate cameras and the attendant plumbing, harnessing and wiring, the 'textbook' definition according to the regulations clearly classifies the camera system as nine separate components, because each item is *directly incorporated into the end product at the final assembly location*.

This needs clarification and will require more time and effort on the part of all parties involved in exceeding the applicable domestic content requirements. These dilemmas become increasingly significant as the increased domestic content thresholds are phased-in.

**Recommended Action:** FTA should convene a committee of stakeholders and develop proposals for industry review.

#### **Section 4.3. Domestic Content Worksheet, Page 38**

**Question for FTA:** Does FTA agree the first bullet point needs to be modified to properly guide all parties toward a sufficient determination of Buy America compliance: *"All components are accounted for in the domestic content calculation and all of the vehicle's domestic and foreign content is accounted for."*

**Comments:** Section 4.3 *"all of the vehicle's domestic content is accounted for"* – what does this require the auditor to do? The Auditor needs only to determine total material cost is reasonably accurate and then to verify Domestic Content % > 60, 65, 70.

**Recommended Wording:** *"All components must be accounted for in the Total Material Cost presented by the manufacturer to the Buy America auditor. All components must be accounted for in the manufacturer's domestic content worksheet. The Buy America auditor must test, confirm and verify that the domestic content of a sufficient number of components exceeds the required percentage. The Buy America auditor need not test 100% of the domestic components to confirm compliance."*

#### **Section 4.3.1. Domestic Content Worksheet Instructions, Page 39**

**Comments:** Both the Handbook's *Domestic Content (Vehicle) Worksheet* template listing 3 different Component calculation scenarios (Section 4.3.1 Domestic Content Worksheet Instructions on **pages 39 and 40**) and FTA's *Sample Buy America (Component) Supplier Certification* forms (*"Section 4.5 Manufacturer Documentation, Step 4"* and *"Appendix B, B.6. Sample Supplier Buy America Certification"* on **pages 50 and 71**, respectively) contain methodology and labeling errors conflicting with FTA's Buy America Rule 49 CFR Part 661.11.

Although the actual **sum total** of domestic and foreign **dollar values** are correct for each example in the Section 4.3. Domestic Content worksheet on page 39, the calculation methodology is misleading and **incorrect**.



The font in the Worksheet is way too small for visually-impaired readers.

(Repeat) **Question for FTA:** Does FTA agree a Component's manufacturing cost (whether purchased from an external supplier or manufactured internally by the Vehicle Builder) is **never included** when calculating the **domestic content cost/percentage** of its **Subcomponents**?

**Comment:** The 5<sup>th</sup>/6<sup>th</sup> column titled "*Component and Subcomponent Material Costs*" incorrectly includes dollar values in rows titled "*OEM Labor/Overhead/Profit*" in "*Component 1*" and "*U.S. Component Manufacturing Costs*" in "*Component 3*."

**Question for FTA:** Does FTA agree that, in order for the calculation of domestic versus foreign Subcomponents to correctly stand alone, the value "*OEM Labor/Overhead/Profit*" in "*Component 1*" and "*U.S. Component Manufacturing Costs*" in "*Component 3*" should be moved from underneath the rows labeled "Subcomponent 1.5" and "Subcomponent 3.4" (respectively) and then re-inserted into a new row labeled "Component Manufacturing Cost" between the rows currently labeled "*U.S. and Foreign Costs Subtotal*" and "*Component \_ Total Cost*" for each of the 3 Components?

**Question for FTA:** Does FTA agree the 7<sup>th</sup>/8<sup>th</sup> column titled "*Subcomponent % of Component and Component Total %*" should be changed to "*Subcomponent % of all Subcomponents*"?

**Question for FTA:** Does FTA agree the rows titled "U.S. and Foreign Costs Subtotal" for each of the 3 Components should be changed to "*U.S. and Foreign Subcomponent Costs Subtotal*"?

**Question for FTA:** Does FTA agree the "Labor/Overhead/Profit" costs of an OEM internally-manufactured Component (e.g., "Component 1") is counted in the same manner as "Component manufacturing costs" as an external supplier's Component (e.g., "Component 3")?

(Repeat) **Question for FTA:** Does FTA agree all Components have a "Component manufacturing cost" regardless of **whether they're domestic or foreign** and whether they're manufactured by the **Vehicle Builder or an external supplier**?

(Repeat) **Question for FTA:** Does FTA agree all Components have "transportation costs to the final assembly location" regardless of **whether they're domestic or foreign** and whether they're manufactured by the **Vehicle Builder or an external supplier**?

(Repeat) **Question for FTA:** Does FTA agree the cost of a domestic component includes direct labor costs, *direct material costs, sales costs, general and administrative costs, and overhead costs associated with manufacturing that component, plus freight-in costs*" (1995 Handbook Q & A # 7)?

### **Component 1**

**Comments:** FTA's term "OEM" ("Original Equipment Manufacturer") represents the Vehicle Builder, even though transit industry professionals usually refer to System and Component manufacturers as the OEM.

A Component's **manufacturing cost** (whether purchased from an external supplier or manufactured internally by the Vehicle Builder) is **not included** when calculating the **domestic content costs/percentage** of its **Subcomponents**.

Component 1 manufactured in the U.S. incorrectly assumes there's no transportation costs.

All **Components** have “transportation costs to the final assembly location” regardless of **whether** they’re **domestic or foreign** and whether they’re manufactured by the **Vehicle Builder or an external supplier**.

(Repeat) **Question for FTA:** Does FTA agree all Components have “transportation costs to the final assembly location” regardless of **whether** they’re **domestic or foreign** and whether they’re manufactured by the **Vehicle Builder or an external supplier**?

**Comment:** Component 2 manufactured overseas incorrectly assumes there’s no (foreign) manufacturing (i.e., labor, profit and administrative and overhead) costs.

**Question for FTA:** Does FTA agree that, on Page 39, The Foreign “*Component % of Vehicle Material*” of 37.92% for Component # 2 is incorrect; and the correct figure (using this Handbook’s methodology) is 17.12%?

**Comment:** Component 3 manufactured in the U.S. incorrectly assumes there’s no transportation costs.

(Repeat) **Question for FTA:** Does FTA agree all Components have “transportation costs to the final assembly location” regardless of **whether** they’re **domestic or foreign** and whether they’re manufactured by the **Vehicle Builder or an external supplier**?

(Repeat) **Question for FTA:** Does FTA agree that, once foreign-manufactured Components clear customs at the U.S. border and are loaded onto U.S. transport trucks, those U.S. transport trucks should be counted as domestic content?

#### **Section 4.3.1. Domestic Content Worksheet Instructions, Step 1, Page 40**

**Comments:** Both FTA’s *Domestic Content (Vehicle) Worksheet* template listing 3 different Component calculation scenarios (**pages 39 and 40**) and FTA’s *Sample Buy America (Component) Supplier Certification* templates (**pages 50 and 71**) contain methodology and labeling errors conflicting with FTA’s Buy America Rule 49 CFR Part 661.11.

The Vehicle Builder (FTA’s term “OEM”) often won’t know each and every Component supplier’s Subcomponents, especially those that are foreign.

#### **Section 4.3.1. Domestic Content Worksheet Instructions, Step 2, Page 40**

**Comments:** There is no Step 2 listed. The handbook skips from Step 1 to Step 3.

#### **Section 4.3.1. Domestic Content Worksheet Instructions, Step 5, Page 41**

(Repeat) **Question for FTA:** Does FTA agree all Components have a “Component manufacturing cost” regardless of **whether** they’re **domestic or foreign** and whether they’re manufactured by the **Vehicle Builder or an external supplier**?

(Repeat) **Question for FTA:** Does FTA agree all Components have “transportation costs to the final assembly location” regardless of **whether** they’re **domestic or foreign** and whether they’re manufactured by the **Vehicle Builder or an external supplier**?

#### **Section 4.3.1. Domestic Content Worksheet Instructions, Step 6, Page 42**

**Question for FTA:** Does FTA agree (a) *“The cost of each subcomponent is the price the **OEM** must pay to a subcontractor or supplier for that subcomponent. Transportation costs to the **final assembly** location must be included in calculating the cost of foreign **subcomponents.**”* should be changed to *“The cost of each subcomponent is the price the **Vehicle Builder or Component supplier** must pay to a subcontractor or supplier for that subcomponent. Transportation costs to the **final assembly** location must be included in calculating the cost of **domestic and foreign components and subcomponents**”*?

**Comments:** In order for the calculation of domestic versus foreign Subcomponents to correctly stand alone, the value *“OEM Labor/Overhead/Profit”* in *“Component 1”* and *“U.S. Component Manufacturing Costs”* in *“Component 3”* should be moved from underneath the rows labeled *“Subcomponent 1.5”* and *“Subcomponent 3.4”* (respectively) and then re-inserted into a new row labeled *“Component Manufacturing Cost”* between the rows currently labeled *“U.S. and Foreign Costs Subtotal”* and *“Component \_ Total Cost”* for each of the 3 Components.

Many Component suppliers will resist or refuse to provide in writing the cost of their Subcomponents as a percentage of the cost of the entire Component because the Vehicle Builder and Auditor can easily calculate the proprietary dollar value of those individual Subcomponents.

The Component supplier’s dollar value cost of their Subcomponents is proprietary information; if the auditor wishes to confirm a Component supplier’s dollar value cost of their Subcomponents, they can audit that Component supplier on-site.

**Question for FTA:** Does FTA expect major component suppliers like Cummins Engine and Allison Transmission to provide proprietary Subcomponent supplier costing information in writing to Vehicle Builders and auditors?

#### **Section 4.3.1. Domestic Content Worksheet Instructions, Step 7, Page 43**

**Question for FTA:** Does FTA agree a) *“This percentage is calculated by taking the cost of the subcomponent and dividing it by the total cost of the component”* should be changed to read *“This percentage is calculated by taking the cost of the subcomponent and dividing it by the total cost of **all subcomponents**”*?

**Question for FTA:** Does FTA agree b) *“Calculate the total percentage by cost of U.S. content by dividing the U.S. Subcomponents Subtotal into Component Total Cost. Calculate the total percentage by cost of foreign content by dividing the Foreign Subcomponents Subtotal into Component Total Cost”* should be changed to read *“Calculate the total percentage by cost of U.S. **Subcomponent** content by dividing the U.S. Subcomponents Subtotal into **the total cost of all subcomponents**. Calculate the total percentage by cost of foreign **Subcomponent** content by dividing the Foreign Subcomponents Subtotal into **the total cost of all subcomponents**”*?

#### **Section 4.3.1. Domestic Content Worksheet Instructions, Step 8, Page 44 (a)**

**Question for FTA:** Does FTA agree a) *“If the component is **of domestic origin** (manufactured in the U.S.) and its subcomponents equal the required minimum percentage (U.S. content >60% (or 65% in FY 18 and 19, or 70% in FY20), the whole component by cost is domestic”* should be changed to read *“If the component is **manufactured in the U.S.** and its subcomponents equal **more than** the required minimum percentage (U.S. content >60% (or 65% in FY 18 and 19, or 70% in FY20), the whole component by cost is domestic”*?

**Section 4.3.1. Domestic Content Worksheet Instructions, Step 8, Page 44**

**Question for FTA:** Does FTA agree b) “*If the component is domestic...*” should be changed to read “*If the component is **manufactured in the U.S.**...*”?

**Section 4.3.1. Domestic Content Worksheet Instructions, Step 9, Page 45, (a)**

**Question for FTA:** Does FTA agree (a) “*If the component is of domestic origin and the minimum percentage of the subcomponents of that component by cost are domestic...*” should be changed to read “*If the component is of domestic origin and **more than the minimum** percentage of the subcomponents of that component by cost are domestic...*”?

**Question for FTA:** Does FTA agree both the U.S. and Foreign “*Component % of Vehicle Material*” of 11.65% and 25.24%, respectively, for Component # 2 are incorrect; and the correct figures (using this Handbook’s methodology) are 9.60% and 17.12%, respectively?

**Question for FTA:** Does FTA agree that, since all other templates within each of the 10 Steps of the 4.3.1. Domestic Content Worksheet Instructions (Pages 38 to 47) designate only Components and Subcomponents (as they pertain to Vehicles), the terms “*System (or Group of Components)*” and “*System 2*” should be changed to “*Component / Subcomponent*” and “*Component 2,*” respectively?

**Section 4.3.1. Domestic Content Worksheet Instructions, Step 9, Page 46**

**Question for FTA:** Does FTA agree b) “*If the component is domestic and contains less than the required minimum domestic **components** by cost,*” should be changed to read “*If the component is **manufactured in the U.S** and contains less than the required minimum domestic **Subcomponents** by cost...*”?

**Section 4.3.1. Domestic Content Worksheet Instructions, Step 10, Page 47**

**Question for FTA:** Does FTA agree the Foreign “*Component % of Vehicle Material*” of 37.92% for Component # 2 is incorrect; the correct figure (using this Handbook’s methodology) is 17.12%?

**Comment:** The font in the Worksheet is way too small for visually-impaired readers.

**Section 4.4.1. Exchange Rates, Page 47**

**Comments:** Section 5.2.10. states “*In all cases, component and subcomponent costs paid in other than U.S. currency must use exchange rates as of the date of the supplier’s executed supplier Buy America certificate*”

Every auditor we’ve ever faced in 22 years of audits allowed/encouraged Vehicle Builders to use actual exchange rates on the date of each Component supplier subcontract or invoice because that exchange rate equals the actual dollar value of each individual Component.

Both Vehicle Builders and Component manufacturers use currency hedging as a strategy designed to mitigate the impact of currency or foreign exchange. The currency exchange issue appears again in 5.2.10 Q&A and the guidance there is inconsistent with 4.4.1.

**Section 4.4.1. Exchange Rates, Page 47**

**Question for FTA:** Does FTA agree the four separate references to foreign currency exchange rates should be harmonized to be consistent throughout the Handbook and send a single, clear message?

**Comments:** The discussions and guidance surrounding the treatment of foreign currency exchange rates needs to be consistent throughout the Handbook. The topic is raised in no fewer than four places in the Handbook and the guidance is inconsistent and confusing (page 37 - actual cost at post-award; page 47 Foreign Exchange rate at time of bid submittal; page 56 – FAQs – Foreign Exchange rate at date of supplier’s certificate, and later on page 56 actual cost;). The guidance in Section 4.4.1 quotes the regulation: “The Buy America rule 49 CFR § 661.11(n) states *“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.”* The Handbook states in 4.4.1: *“The manufacturer will also use the same exchange rate(s) to calculate the foreign component cost for the post-delivery audit and submit to the recipient’s auditor for verification.”* Refer back to page 37 of the Handbook that states: *“For the post-delivery audit, the actual cost, not the bid price, of a component is to be considered in calculating domestic content.”* Thus, the cost for the component would be the purchase price paid by the bidder (i.e., vehicle manufacturer) to the component or subcomponent supplier. The actual cost would presumably be based on an invoice price, and the Foreign Exchange rate would be based on the actual rate in effect as of the invoice date unless the TVM and the supplier had some prior agreement on applying a pre-set exchange rate to invoice prices. One would expect the Foreign Exchange rate on the date a bid or offer is submitted to be different from the rate in effect at the time the TVM is invoiced for the part(s). In the case of a railcar procurement, it could be two years from bid submittal to the invoicing of purchases for the actual production of the vehicles.

FAQ 5.2.10 states: *“How are currency exchange rates addressed for Buy America audits? The cost of a component of foreign origin is set using the foreign exchange rate at the time the bidder or offeror executes the Buy America certificate. 49 CFR § 661.11(n). However, large projects with long post-delivery periods and economic fluctuations can affect material costs between the times of the pre-award and post-delivery audits. In all cases, component and subcomponent costs paid in other than U.S. currency must use exchange rates as of the date of the supplier’s executed supplier Buy America certificate. The post-delivery audit needs to verify the actual costs paid to suppliers for all components and subcomponents.”*

**Recommended Wording for Page 37:** *“For the post-delivery audit, the actual cost, not the bid price, of a component is to be considered in calculating domestic content. Accordingly, the foreign exchange rate in effect on the date of the invoice (or supply agreement that pre-sets foreign exchange rates), would apply. The post-delivery audit needs to verify the actual costs paid to suppliers for a sufficient number of components and subcomponents of the vehicle that aggregate to a percentage that exceeds the required domestic content requirements of 60%, 65% or 70%.”*

**4.4.1 Exchange Rates on Page 47** states *“The Buy America rule 49 CFR § 661.11(n) states “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.”* This treatment applies to pre-award audit situations.

**5.2.10.** on Page 56 states *“How are currency exchange rates addressed for Buy America audits? For the pre-award audit, the cost of a component of foreign origin is set using the foreign exchange rate at the time the bidder or offeror executes the Buy America certificate in accordance with 49 CFR § 661.11(n). However, large projects with long post-delivery periods and economic fluctuations can affect material costs and foreign exchange rates between the times of the pre-award and post-delivery audits. The post-delivery audit needs to verify the actual costs paid to suppliers for all components and subcomponents.”*

**Comments:** For post-delivery audits, the component and subcomponent costs paid in other than U.S. currency must use exchange rates in effect as of the date of the supplier's invoice (or according to a supply agreement that contains pre-set rates or procedures for establishing for currency exchange rates.

This suggested wording brings consistency to the application of foreign exchange rates and recognizes the differences that occur between pre-award and post-delivery audits. The Handbook is inconsistent. The regulation is consistent, however it makes no distinction to consider the economic realities of foreign exchange fluctuation; and may require a modification to the CFR.

#### **Section 4.4.2. Transportation Costs, Pages 47-48**

**Comments:** Counting US Flagships as foreign content discourages vehicle manufacturers from exceeding the more than 50% U.S. Flagship minimum, thereby decreasing U.S. jobs. The treatment of transportation costs in the handbook and in the regulations is inconsistent, confusing and runs afoul of the Super Circular (formerly known as the Common Grant Rule). The Circular requires costs to be treated consistently. Accordingly, if foreign freight counts as foreign content, then domestic freight should count as domestic content. Or better yet, remove freight (transportation costs) to the final assembly location completely from the calculation of domestic content. That would eliminate freight from being considered at all, and the merits of domestic content would be based on components only.

(Repeat) **Question for FTA TA:** Does FTA agree all Components have "transportation costs to the final assembly location" regardless of **whether** they're **domestic or foreign** and whether they're manufactured by the **Vehicle Builder or an external supplier**?

(Repeat) **Question for FTA:** Does FTA agree the cost of a domestic component includes direct labor costs, *direct material costs, sales costs, general and administrative costs, and overhead costs associated with manufacturing that component, plus freight-in costs*" (1995 Handbook Q & A # 7)?

(Repeat) **Question for FTA:** Does FTA agree that, once foreign-manufactured Components clear customs at the U.S. border and are loaded onto U.S. transport trucks, those U.S. transport trucks should be counted as domestic content?

#### **Section 4.4.3. Tariff Exemptions, Page 46**

**Comments:** If FTA's new handbook is changing from its existing required specific declarations/ forms under U.S. Code Harmonized Tariff Schedule in 19 U.S.C. 1202 to now accept alternate form(s) of documentation, then 49 CFR Part 661 should be updated to reflect that change. Said alternative formats should be illustrated by example as to how they demonstrate tariff exemption.

#### **Section 4.5 Manufacturer Documentation, Step 3, Page 49 b)**

**Comment:** FTA's new Handbook doesn't address the fact a U.S.-manufactured Component containing **less** than the required percentage of domestic Subcomponents must subtract any and all **foreign profit** and **administrative and overhead** costs (e.g., Engineering, Program Management, QA/QC, etc.) from its sell price to the Vehicle Builder.

**Question for FTA:** Does FTA agree "*(considered to be the difference between the cost of the foreign subcomponents and the total cost of the component)*" should be deleted because a U.S.-manufactured Component may contain foreign profit and administrative *and* overhead costs?

#### **4.4.3 Tariff Exemptions, Page 48**

**Question for FTA:** Does FTA agree the following sentence needs to be re-worded to clarify and illustrate by including examples of the alternate form(s) of documentation: *“In the event these declarations and/or forms may be difficult to acquire for a Buy America audit, the auditor may accept alternate form(s) of documentation, which proves that the duty was not paid. These may include NAFTA affidavits, Purchase Orders, or letters/emails from responsible parties”*?

**Comments:** The NAFTA certificate must be obtained and kept on file to substantiate tariff exemptions for US Customs and Border Patrol and its auditors primarily, not just Buy America auditors. If the TVM indeed claims tariff exemption, they must be able to substantiate the exemption with a NAFTA certificate. It may be ‘difficult’ to retrieve from their system, however it is not irretrievable. In the planning stages of the Buy America audit, the Buy America auditor must make clear to the TVM the expectations for all documents and information to be provided to facilitate the pre-award and post-delivery audits. The Handbook emphasizes this on page 15, including a list of *“Recommended Discussion Topics During the Solicitation Phase of the Procurement”* and also stating: *“A pre-proposal conference is a good opportunity for recipients to highlight important Buy America requirements and identify specific Buy America related documentation that manufacturers will be expected to include in their bids or produce at the pre-award audit phase.”* And, what’s good for the pre-award phase in terms of expectations of the auditor is also good for the post-delivery audit. Difficult to retrieve is only difficult because the TVM system of document management and control makes it difficult to retrieve. A purchase order does provide for an independent corroboration from the supplier, and TVM can state anything on their purchase order forms. Please provide examples of who the responsible parties are. Provide an example of NAFTA affidavit that would suffice to verify tariff exemption.

A purchase order does provide for an independent corroboration from the supplier, and TVM can state anything on their purchase order forms. Please provide examples of who the responsible parties are. Independent corroboration is the preferred method of confirming the TVM’s claims. In 25 years of conducting Buy America audits, I have never seen a letter or email from responsible parties that has provided independent corroboration of tariff exempt status of a product, component or subcomponent. Provide an example of NAFTA affidavit that would suffice to verify tariff exemption.

**Recommended Wording:** *“In the event these declarations and/or forms may be difficult to acquire for a Buy America audit, the auditor may accept a NAFTA affidavit certified as tax exempt by the supplier.”*

#### **Section 4.5 Manufacturer Documentation, Step 3, Page 50**

**Comments:** Both the Handbook’s *Domestic Content (Vehicle) Worksheet* template listing 3 different Component calculation scenarios (Section 4.3.1 Domestic Content Worksheet instructions on **pages 39 and 40**) and FTA’s *Sample Buy America (Component) Supplier Certification* forms (*“Section 4.5 Manufacturer Documentation, Step 4”* and *“Appendix B, B.6. Sample Supplier Buy America Certification”* on **pages 50 and 71**, respectively) contain calculation methodology and labeling errors conflicting with FTA’s Buy America Rule 49 CFR Part 661.11.

FTA’s *Sample Buy America (Component) Supplier Certification* forms (*“Section 4.5 Manufacturer Documentation, Step 4”* and *“Appendix B, B.6. Sample Supplier Buy America Certification”* on **pages 50 and 71**, respectively) contain inconsistent wording.

While page 50 correctly states in the **1st box** “*More than the required percentage...*,” page 70 incorrectly states “*The required percentage...*”

While page 50 correctly states in the **2nd box** “*the cost of U.S. subcomponents and cost of U.S. manufacturing labor are eligible for inclusion...*,” page 70 incorrectly states (only) “*the cost of U.S. subcomponents is eligible for inclusion ...*” thereby not including “*and cost of U.S. manufacturing labor*”

While page 50 includes no reference to 49 CFR § 661.11 in any of the middle section’s 3 boxes (where Component supplier checks only one box) page 70 references 49 CFR § 661.11(g), (l), and (i).

The FTA Handbook’s statement “*Calculate the cost of U.S. subcomponents by dividing the cost of U.S. subcomponents by the cost of all subcomponents for each component*” confirms that Subcomponents should **not** be divided by the total cost of the **Component** and supports the 1995 Handbook that states “*A component’s manufacturing cost is never used when calculating the domestic content of that component; its domestic content is based on subcomponent cost only. However, the component’s manufacturing cost should be used in the domestic content calculation of the bus, if the component was manufactured in the United States.*”

If a Component has some domestic content but fails to meet both parts of a Component’s §661.11(g) two-part domestic origin requirement (i.e., US-manufactured Component and more than the minimum percentage of US Subcomponents), that Component supplier can report their exact domestic content value while still protecting their proprietary information by providing data in a method that reflects FTA’s Buy America Rule **49 CFR §661.11**:

**1<sup>st</sup> box: 49 CFR §661.11(g)**

More than the required percentage of the subcomponents, by cost, are U.S. manufactured and the component is manufactured in the U.S. The Supplier attests that the U.S. content of subcomponents, by cost, is as indicated below.

<b>U.S. Component</b> Name/Description	<b>U.S. Component</b> supplier Company Name	<b>U.S. Component</b> supplier manufacturing location (city, state)	
<b>U.S. Subcomponent</b> Name/Description	<b>U.S. Subcomponent</b> supplier Company Name	<b>U.S. Subcomponent</b> supplier manufacturing location (city, state)	<b>Subcomponent % of total cost of all subcomponents (domestic and foreign)</b>

Total **Domestic Subcomponent % of all subcomponents** (domestic and foreign): \_\_\_\_\_%



**2<sup>nd</sup> box: 49 CFR §661.11(i)**

This component is **manufactured in the United States**, but contains **less than the required percentage of domestic subcomponents**, by cost. The Supplier attests the **combined cost** of the **domestic subcomponents** and the cost of **Component U.S. Manufacturing** is as indicated below.

<b>U.S. Component</b> Name/Description	<b>U.S. Component</b> supplier Company Name	<b>U.S. Component</b> supplier manufacturing location (city, state)	
<b>U.S. Subcomponent</b> Name/Description	<b>U.S. Subcomponent</b> supplier Company Name	<b>U.S. Subcomponent</b> supplier manufacturing location (city, state)	<b>Subcomponent % of total cost of all subcomponents (domestic and foreign)</b>

Total **Domestic Subcomponent %** of **all subcomponents** (domestic and foreign): \_\_\_\_\_%  
**Combined cost** of **Domestic Subcomponents** **and** **Component U.S. Manufacturing**: \$ \_\_\_\_\_

**3<sup>rd</sup> box: 49 CFR §661.11(i)**

This component is **not manufactured in the United States** but contains U.S. subcomponents exported for inclusion in a component that is manufactured outside the U.S. and received a tariff exemptions under the procedures set forth in 19 CFR 10.11 through 10.24. The Supplier attests the cost of the **domestic subcomponents** is as indicated below.

<b>U.S. Component</b> Name/Description	<b>U.S. Component</b> supplier Company Name	<b>U.S. Component</b> supplier manufacturing location (city, state)	
<b>U.S. Subcomponent</b> Name/Description	<b>U.S. Subcomponent</b> supplier Company Name	<b>U.S. Subcomponent</b> supplier manufacturing location (city, state)	<b>Subcomponent % of total cost of all subcomponents (domestic and foreign)</b>

**Combined cost** of all **Domestic Subcomponents** \$ \_\_\_\_\_

**Section 4.5 Manufacturer Documentation, Step 4, Page 50**

**Question for FTA:** Does FTA agree c) *“Indicate each subcomponent’s percentage of the component’s domestic content in the designated space; the sum of the domestic content percentages of all subcomponents will add up to the total domestic content percentage of the component.”* should be changed to read c) *“Indicate each subcomponent’s percentage of **all subcomponents** in the designated space.”* – thereby deleting *“; the sum of the domestic content percentages of all subcomponents will add up to the total domestic content percentage of the component”*?

**Comments:** Part numbers aren't always identified at Pre-Award and they're indecipherable after auditor is off-site.

Although FTA correctly states previously on this same Handbook Page 50 (Section 4.5 *Manufacturer Documentation, Step 3*) "Calculate the cost of U.S. subcomponents by dividing the cost of U.S. subcomponents by the cost of all subcomponents for each component," FTA incorrectly states here "Indicate each subcomponent's percentage of the component's domestic content."

**Section 4.5 Manufacturer Documentation, Step 4, Page 50**

**Comment:** FTA's handbook has inconsistencies in the sample Buy America (Component) Supplier Certification forms on pages 50 and 71 ("Section 4.5 *Manufacturer Documentation, Step 4*" and "Appendix B, B.6. *Sample Supplier Buy America Certification*," respectively).

**Question for FTA:** Does FTA agree that, within the "% Foreign Content" column of the "Component Name" row, the term "Total content % of all subcomponents" should be changed to "Total **foreign** content % of all subcomponents."

**Question for FTA:** Does FTA agree that, within the "% Foreign Content" column of the "Subcomponent Name" row, the term "Total U.S. content % of all subcomponents" should be changed to "Total **foreign** content % of **individual subcomponent**."

**Section 5.1.3. When will the Buy America post-delivery audit be conducted?, Page 52**

**Comments:** The first vehicle (especially prototypes) often have a different percentage of domestic and foreign Components than subsequent production vehicles for a myriad of reasons (e.g., Recipient demand for prototypes, transferring foreign technology to the U.S., First Article Inspections, delivery schedule changes, etc.).

Auditors should always require the Vehicle Builder to identify any and all differences in material configuration within the entire fleet of individual vehicles (especially a different percentage of domestic and foreign Components).

Although every End Product Vehicle must be Buy-America compliant, auditors typically request Vehicle Builders to calculate their Buy America domestic/foreign material percentages by vehicle type (e.g., Buses: diesel, CNG, electric, hybrid; Railcars: cab, trailer, baggage, bistro, with/without wheelchair ramps, bathrooms, etc.).

**Section 5.1.5. Do support vehicles have to meet the minimum domestic content requirement and final assembly in the U.S.?, Page 53**

**Question for FTA:** Does FTA agree "Do support vehicles have to meet the **minimum** domestic content requirement and final assembly in the U.S." should be changed to "Do support vehicles have to meet **more than** the minimum domestic content requirement and final assembly in the U.S.?"

**Section 5.2.2. Is the domestic content threshold calculated as a percentage of total vehicle price?, Page 54**

(Repeat) **Question for FTA:** Does FTA agree all Components have "transportation costs to the final assembly location" regardless of **whether** they're **domestic or foreign** and whether they're manufactured by the **Vehicle Builder or an external supplier**?

**Section 5.2.3. How is the origin of a component determined?, Page 54**

**Question for FTA:** Does FTA agree “The cost of an individual domestic subcomponent is the price a *subcomponent manufacturer* pays a supplier for that domestic subcomponent” should be changed to “The cost of an individual domestic subcomponent is the price a **Component manufacturer (or Vehicle Builder)** pays a supplier for that domestic subcomponent”?

**Section 5.2.10. How are currency exchange rates addressed for Buy America audits?, Page 56**

**Comments:** Every auditor we’ve ever faced in 22 years of audits allowed/encouraged Vehicle Builders to use actual exchange rates on the date of each Component supplier subcontract because that exchange rate equals the actual dollar value of each individual Component.

If “The post-delivery audit needs to verify the actual costs paid to suppliers for all components and subcomponents,” then “the date of the supplier’s executed supplier Buy America certificate” will be more accurate than and should supersede “the time the bidder or offeror executes the Buy America certificate.” The date of the invoice for said costs will be even more accurate than the date of the supplier certificate.

Both Vehicle Builders and Component manufacturers use currency hedging as a strategy designed to mitigate the impact of currency or foreign exchange.

**5.2.11. Can systems be components for domestic content calculations?, page 56**

**Comment:** FTA should clarify Handbook section 5.2.11 by adding a sentence stating “Only these specific systems can be classified as Components.”

**Question for FTA:** Does FTA agree the same systems should be classified as components for **foreign** content calculations?

**Comment:** At least one large consulting firm’s Buy America auditor classified a Railcar rolling stock entire completed Truck assembly (i.e., system) as a Component and the following materials as its Subcomponents: axles, journal bearings, traction motors (ignoring the fact all 3 material items are specified as “Typical” Components in Appendix C to § 661.11).

**Question for FTA:** Does FTA agree axles, journal bearings, traction motors and truck frame are individual **Components** for calculating Buy America, even when procured as an entire completed Truck assembly (i.e., system)?

**Section 5.2.12. What if the manufacturer is concerned about releasing proprietary information?, Page 56**

**Comments:** Similar to Vehicle Builders, Component suppliers should be protected from auditors (through Vehicle Builders) attempting to obtain copies of proprietary documentation.

Despite this clear directive, some auditors will continue to pressure Vehicle Builders and Component suppliers to walk away with proprietary costing documents, especially during Pre-Award audits when the “Apparent Successful Proposer” Vehicle Manufacturer doesn’t want to upset their FTA Recipient customer and risk delay of award or being deemed non-complaint.

### **Appendix A.1 Proposal Compliance Checklist, Page 58**

**Comments:** Most of these checklist items are outside a Buy America auditor’s work scope, expertise and responsibility (e.g., Lobbying, Civil Rights, DBE, Liquidated damages, Warranty terms, etc.).

The regulations require the recipient to determine that “(a) the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and . . . “. . . “. This does not have anything to do with whether a Lobbying certificate was filed. Furthermore, these federal certificates require different tests of compliance than does a Buy America rolling stock audit. The checklist is presented without introduction, background or orientation on when, why and how to use it and who is supposed to apply it. It does not add value to the conduct and completion of a Buy America audit. Compliance with the technical specifications should be the focus as the technical specifications address components and are the place where the issues of Buy America compliance lie. They are given short shrift in this exhibit. Some of the items listed especially in the ‘compliance with federal requirements’ section, if they reflected a ‘NO’ answer, the proposal would be disqualified and would never advance far enough into to the procurement process to ever undergo a Buy America audit.

### **Appendix A.2.1. Pre-Award Audit Purchaser’s Requirements Certification for Recipients, Buy America Certification, A. □, Page 59**

**Question for FTA:** Does FTA agree A. □, “Reviewed and Verified **Minimum** Domestic Content” should be changed to “Reviewed and Verified **More than Minimum** Domestic Content”?

### **Appendix B.1. Certificate of Compliance with Buy America Rolling Stock Requirements, Page 65**

**Comments:** Since Rolling Stock Procurements must comply with 49 CFR § 661.11 and are **not** subject to 49 CFR § 661.5 General Requirements that require 100% domestic Components (of which can contain all foreign Subcomponents), FTA would eliminate widespread confusion among Recipients, Vehicle Builders and Component suppliers if FTA issued a Dear Colleague letter to all Recipients mandating they include only § 661.12 “*Certification requirement for procurement of buses, other rolling stock and associated equipment*” and to **not** include § 661.6 “*Certification requirements for procurement of steel or manufactured products*”

(Repeat) **Question for FTA A:** Does FTA agree Recipients should never include in their Rolling Stock-only RFQs, RFPs and IFBs the Buy America certificate “§ 661.6 Certification requirements for procurement of steel or manufactured products?”

### **Appendix B.6. Sample Buy America Certification, Instructions for Completing the Buy America Certificate, Page 70**

**Question for FTA:** Does FTA agree c) “*Indicate each subcomponent’s percentage of the component’s domestic content in the designated space; the sum of the domestic content percentages of all subcomponents will add up to the total domestic content percentage of the component.*” should be changed to read c) “*Indicate each subcomponent’s percentage of **all subcomponents** in the designated space.*”

**Appendix B.6. Sample Buy America Certification, Instructions for Completing the Buy America Certificate, Page 71**

**Comments:** Both the Handbook's *Domestic Content (Vehicle) Worksheet* template listing 3 different Component calculation scenarios (Section 4.3.1 Domestic Content Worksheet instructions on **pages 39 and 40**) and FTA's *Sample Buy America (Component) Supplier Certification* forms ("Section 4.5 *Manufacturer Documentation, Step 4*" and "*Appendix B, B.6. Sample Supplier Buy America Certification*" on **pages 50 and 71**, respectively) contain methodology and labeling errors conflicting with FTA's Buy America Rule 49 CFR Part 661.11.

FTA's *Sample Buy America (Component) Supplier Certification* forms ("Section 4.5 *Manufacturer Documentation, Step 4*" and "*Appendix B, B.6. Sample Supplier Buy America Certification*" on **pages 50 and 71**, respectively) contain inconsistent wording.

While page 50 correctly states in the **1st box** "**More than the required percentage...**," page 70 incorrectly states "*The required percentage...*"

While page 50 correctly states in the **2nd box** "**the cost of U.S. subcomponents and cost of U.S. manufacturing labor are eligible for inclusion...**," page 70 incorrectly states (only) "*the cost of U.S. subcomponents is eligible for inclusion ...*" thereby not including "**and cost of U.S. manufacturing labor**"

While page 50 includes no reference to 49 CFR § 661.11 in any of the middle section's 3 boxes (where Component supplier checks only one box) page 70 references 49 CFR § 661.11(g), (l), and (i).

The FTA Handbook's statement "*Calculate the cost of U.S. subcomponents by dividing the cost of U.S. subcomponents by **the cost of all subcomponents** for each component*" confirms that Subcomponents should **not** be divided by the total cost of the **Component** and supports the 1995 Handbook that states "*A component's manufacturing cost is never used when calculating the domestic content of that component; its domestic content is based on subcomponent cost only. However, the component's manufacturing cost should be used in the domestic content calculation of the bus, if the component was manufactured in the United States.*"

**Question for FTA:** Does FTA agree that, within the "*% Foreign Content*" column of the "*Subcomponent Name*" row, the term "*Total foreign content % of individual subcomponents*" should be changed to "*Total foreign content % of **individual subcomponent***"?

If a Component has some domestic content but fails to meet both parts of a Component's §661.11(g) two-part domestic origin requirement (i.e., US-manufactured Component and more than the minimum percentage of US Subcomponents), that Component supplier can report their exact domestic content value while still protecting their proprietary information by providing data in a method that reflects FTA's Buy America Rule **49 CFR §661.11**:

**1<sup>st</sup> box: 49 CFR §661.11(g)**

More than the required percentage of the subcomponents, by cost, are U.S. manufactured and the component is manufactured in the U.S. The Supplier attests that the U.S. content of subcomponents, by cost, is as indicated below

<b>U.S. Component</b> Name/Description	<b>U.S. Component</b> supplier Company Name	<b>U.S. Component</b> supplier manufacturing location (city, state)	
<b>U.S. Subcomponent</b> Name/Description	<b>U.S. Subcomponent</b> supplier Company Name	<b>U.S. Subcomponent</b> supplier manufacturing location (city, state)	<b>Subcomponent % of total cost of all subcomponents (domestic and foreign)</b>

Total **Domestic Subcomponent % of all subcomponents** (domestic and foreign): \_\_\_\_\_%

**2<sup>nd</sup> box: 49 CFR §661.11(i)**

This component is **manufactured in the United States**, but contains **less than the required percentage of domestic subcomponents**, by cost. The Supplier attests the **combined cost** of the **domestic subcomponents and** the cost of **Component U.S. Manufacturing** is as indicated below.

<b>U.S. Component</b> Name/Description	<b>U.S. Component</b> supplier Company Name	<b>U.S. Component</b> supplier manufacturing location (city, state)	
<b>U.S. Subcomponent</b> Name/Description	<b>U.S. Subcomponent</b> supplier Company Name	<b>U.S. Subcomponent</b> supplier manufacturing location (city, state)	<b>Subcomponent % of total cost of all subcomponents (domestic and foreign)</b>

Total **Domestic Subcomponent % of all subcomponents** (domestic and foreign): \_\_\_\_\_%

**Combined cost of Domestic Subcomponents and Component U.S. Manufacturing:** \$ \_\_\_\_\_

**☐ 3<sup>rd</sup> box: 49 CFR §661.11(i)**

This component is **not** be **manufactured in the United States** but contains U.S. subcomponents exported for inclusion in a component that will be manufactured outside the U.S. and will receive a tariff exemptions under the procedures set forth in 19 CFR 10.11 through 10.24. The Supplier attests the cost of the **domestic subcomponents** is as indicated below.

<b>U.S. Component</b> Name/Description	<b>U.S. Component</b> supplier Company Name	<b>U.S. Component</b> supplier manufacturing location (city, state)	
<b>U.S. Subcomponent</b> Name/Description	<b>U.S. Subcomponent</b> supplier Company Name	<b>U.S. Subcomponent</b> supplier manufacturing location (city, state)	<b>Subcomponent % of total cost of all subcomponents (domestic and foreign)</b>

**Combined cost of all Domestic Subcomponents** \$ \_\_\_\_\_

**B.11 Sample Post-Delivery Purchaser’s Requirements Certification (More Than Ten Buses or Modified Vans, Page 76**

**Comment:** The Vehicle Builder should confirm the Auditor has scheduled to meet with the Resident Inspector on-site during the Vehicle Builder’s Post-Delivery audit. The TVM is not the responsible party for this meeting – it is the responsibility of the auditor, the Transit Authority and the Resident Inspector.

**3.1 Verification of Domestic Content and Final Assembly Cost, Page 86**

**Question for FTA:** Does the FTA agree the following sentence needs to be modified to clearly reflect the Buy America auditor conclusion that the domestic content exceeds or does not exceed the required percentage: *“The self-certification of the manufacturer of domestic content or compliance is not sufficient. The reviewer should examine documentation that includes sufficient detail for the reviewer to determine whether the manufacturer is likely to meet the domestic content requirements”?*

**Comments:** *“Likely to meet”?* Why? The regulations do not ask for a statement of probability. This is not an exercise in odds-making; the auditor must gather sufficient evidence to determine whether TVM complies or does not comply at the pre-award audit stage. The audit objective is make a conclusion; it’s a simple yes or no conclusion not a maybe; not a likelihood.

**Recommended Wording:** *“The Buy America auditor should examine documentation in sufficient detail to support their conclusion that the domestic content exceeds or does not exceed the required percentage for the vehicle(s) to be purchased.”*

**3.2 Verification of U.S. Final Assembly Location and Activities, Page 87**

**Question for FTA:** Does the FTA agree the following sentence needs to be modified to focus the review of final assembly costs on those factors that are required by the regulations: *“Provide a summary of the final assembly costs”?*

**Comments:** Why? The requirement is for TVM to report cost of Final Assembly; the auditor’s charge is to determine that it is indeed reported and to determine that it is reasonable – a breakdown of the costs is unnecessary, not required and a waste of time and money. It adds no value to the Buy America audit report. The basic test is to determine if the final assembly costs presented are reasonable; that is to determine if the final assembly cost presented is reflective of the direct labor time and effort required on the shop floor to accomplish those activities mandated by the FTA as minimum final assembly activities as spelled out in *Appendix D to §661.11—Minimum Requirements for Final Assembly*; nothing more, nothing less.

The Buy America auditor should determine the manufacturer did indeed report final assembly cost as required, and should examine documentation in sufficient detail to support their conclusion that the domestic content exceeds requirements, and final assembly cost as reported is sufficient to encompass the direct labor costs and associated level of effort required on the production floor to accomplish the applicable activities set forth by the FTA as minimum final assembly activities in Appendix D to §661.11—Minimum Requirements for Final Assembly.

**Recommended Wording:** Provide a summary that addresses the key objectives of the Buy America audit: *“The Buy America auditor should determine the manufacturer did indeed report final assembly cost as required, and should examine documentation in sufficient detail to support their conclusion that the domestic content exceeds requirements, and final assembly cost as reported is sufficient to encompass the direct labor costs and associated level of effort required on the production floor to accomplish the applicable activities set forth by the FTA as minimum final assembly activities in Appendix D to §661.11—Minimum Requirements for Final Assembly.”*

#### **4.0 PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION, Page 87**

**Question for FTA:** Does the FTA agree the following sentence needs to be corrected for accuracy to reflect the Recipient as the party responsible for filing the Pre-Award Purchaser’s Requirements Certification: *“Provide a summary addressing the manufacturer’s Pre-Award Purchaser’s Requirements Certification and the reviewer’s methods of review and analysis to determine whether the requirements were satisfied”?*

**Comments:** There are very confusing, inaccurate and misleading statements here, this needs to be rewritten to be clear, eliminate redundancy and inconsistency and to set forth guidance as to what needs to be done and by whom it needs to be done by to satisfy the requirements. The Pre-Award Purchaser’s Requirements Certification is the sole responsibility of the **Transit Authority / Grantee / Recipient**; **not the transit vehicle manufacturer**. The reference here to the *manufacturer’s Pre-Award Purchaser’s Requirements Certification* is totally incorrect and reference to the manufacturer must be deleted. Let’s clarify the objectives:

1. Determine if the Recipient met the requirements of the Pre-Award Purchaser’s Requirements Certification.
  - a. State whether the Recipient compared the manufacturer’s bid specifications to the Recipient’s solicitation specifications to determine specifications were met, and that the comparison and conclusion were documented.
  - b. State whether the Recipient conducted due diligence to determine the manufacturer had the technical capability and capacity to produce the vehicle(s) in compliance with the contract requirements, and technical due diligence and conclusion were documented.



- c. State whether the Recipient conducted due diligence to determine the manufacturer had the financial capability and capacity to produce the vehicle(s) in compliance with the contract requirements, and the financial due diligence and conclusion were documented.
2. Summarize what the Recipient reviewed to support their determinations that the manufacturer was compliant with specifications and deemed technically and financially responsible to execute the contract.

**Recommended Wording:** *“The Buy America auditor should review the work the Recipient completed to satisfy the Pre-Award Purchaser’s Requirements.*

1. *Determine if the Recipient met the requirements of the Pre-Award Purchaser’s Requirements Certification.*
  - a. *State whether the Recipient compared the manufacturer’s bid specifications to the Recipient’s solicitation specifications to determine specifications were met, and that the comparison and conclusion were documented.*
  - b. *State whether the Recipient conducted sufficient due diligence to determine the manufacturer had the technical capability and capacity to produce the vehicle(s) in compliance with the contract requirements, and technical due diligence and conclusion were documented.*
  - c. *State whether the Recipient conducted sufficient due diligence to determine the manufacturer had the financial capability and capacity to produce the vehicle(s) in compliance with the contract requirements, and the financial due diligence and conclusion were documented.*
2. *Summarize what the Recipient reviewed to support their determinations that the manufacturer was compliant with specifications and deemed technically and financially responsible to execute the contract.”*

**Comments:** The auditor should review the due diligence report(s) to determine that the appropriate scope of due diligence was completed by the Recipient and done so in a timely manner. The auditor should not supplant or second guess the diligence of the Recipient methods of review and analysis unless the auditor is qualified and engaged to do so by the **transit authority**; and unless the due diligence is insufficient or not evident.

The statement that the summary **may** include a brief summary discussion is incomplete and misleading. The steps described in the discussion in the Handbook here address the compliance with specifications requirement, however it totally ignores financial capability. The discussion to be complete should address the auditor’s review of the due diligence conducted by the **Transit Authority** to determine that the TVM’s technical specifications meet the **Transit Authority’s** technical requirements as set forth in the solicitation documents and addenda thereto; **and** is responsible (i.e., that it possesses the technical and financial capability - is responsible) to complete the contract as required. Responsibility is included earlier in the Handbook in Section 2.0 on page 86, however it omits financial capability there as well.

Provide a summary addressing purchaser's requirements and method of review used by auditor to determine if requirements were met. Responsibility – summary may include a list of past deliveries of similar vehicles in the past five years. Summary may also indicate if TVM will use the same processes at the same final assembly facility. A list of past deliveries and using the same processes at the same facility does **not** provide near enough information to determine if a TVM is responsible. Responsible means the TVM has the technical capacity **and** the financial capacity to build Buy America compliant vehicles in accordance with the **Transit Authority's** technical specifications, schedule and budget. The narrative here needs to be more fully developed and descriptive to address diligence that needs to be done before entering into a contract for rolling stock. The diligence called for in the Purchaser's Requirements Certification parallels the FTA responsibility requirements called for in FTA Circular 4220. Typically, it is the duty of the **Transit Authority**, and the Buy America auditor merely reports on what the **Transit Authority** did to satisfy responsibility requirements.

**Recommended Wording:** Replace the entire section 4.0 PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION, Page 87 with the following:

*“Provide a summary addressing the Recipient’s Pre-Award Purchaser’s Requirements Certification and the Recipient’s methods of review and analysis to determine whether the FTA requirements were satisfied. The Buy America auditor’s objectives are to determine if the Recipient met the requirements of the Pre-Award Purchaser’s Requirements Certification. The Buy America auditor’s summary should:*

- *State whether the Recipient compared the manufacturer’s bid specifications to the Recipient’s solicitation specifications to determine specifications were met, and that the comparison and conclusion were documented.*
- *State whether the Recipient conducted due diligence to determine the manufacturer had the technical capability and capacity to produce the vehicle(s) in compliance with the contract requirements, and technical due diligence and conclusion were documented.*
- *State whether the Recipient conducted due diligence to determine the manufacturer had the financial capability and capacity to produce the vehicle(s) in compliance with the contract requirements, and the financial due diligence and conclusion were documented.*
- *Conclude whether the Recipient conducted and documented its requisite due diligence efforts necessary to certify compliance as require by the Pre-Award Purchaser’s Requirements Certification.”*

### **1.0 EXECUTIVE SUMMARY, Page 92**

**Question for FTA:** Does FTA agree the second sentence in the executive summary should be modified to accurately reflect the requirements and responsibilities of conducting the due diligence and filing the required applicable post-delivery certificates are solely the responsibility of the Transit Authority and **not** the transit vehicle manufacturer?

**Comments:** The Handbook states: *“Provide a statement about whether the rolling stock vehicle manufacturer is compliant with both (or all three) certifications; reference FTA regulations (49 CFR parts 661 and 663).”* The Transit Authority is solely responsible for the Buy America Post-Delivery certificates, **not** the transit vehicle manufacture. The Handbook as written sends a confusing and incorrect message about who is responsible for the certificates.

The Handbook places inordinate emphasis on the three Buy America Post-Delivery certificates and focuses on these three certificates as the major sections of the Post-Delivery Audit report. This gives short shrift to the core objective of the Post-Delivery Audit and downplays the significance of verifying domestic content exceeds the applicable percentages and of reviewing final assembly elements (location, activities and cost) for compliance. The Handbook as written sends a confusing and incorrect message about the primary objective of the Buy America Post-Delivery audit. This misplaced emphasis continues throughout most of the executive summary. One cannot forget that the Recipient must have a Buy America Post-Delivery audit in hand before it can sign off the Post-Delivery Buy America certificate.

The Handbook devotes the following two full paragraphs to the certifications, and makes no mention of domestic content and final assembly:

*“Provide a statement about whether the rolling stock vehicle manufacturer is compliant with both (or all three) certifications; reference FTA regulations (49 CFR parts 661 and 663).*

*Provide a description of how the report is divided into two (or three) major sections in accordance with the regulation's requirements, namely:*

- i) Post-Delivery Buy America Certification*
- ii) Post-Delivery Purchaser's Requirements Certification*
- iii) Post-Delivery FMVSS Certification (if applicable)*

*Include a statement about the appendices of the report containing the relevant attachments to support the two (or three) major sections.”*

The primary objective of the Buy America Post-Delivery audit is to determine whether the vehicles as built exceeded the required domestic content in effect at the time; and whether the vehicle manufacturer complied with all applicable elements of final assembly (US location, minimum required activities conducted in the US and reporting of final assembly cost). For whatever reason, this is totally absent from the Handbook's Buy America Post-Delivery audit report executive summary discussion.

**Recommended Wording:** Please insert the following as the second paragraph of the Executive Summary:

*“Provide a summary that addresses the auditor's conclusion regarding the vehicle manufacturer's compliance with Buy America Post-delivery requirements of domestic content and final assembly. The objective of the Buy America Post-Delivery audit is to determine whether the vehicles as built exceeded the required domestic content in effect at the time; and whether the vehicle manufacturer complied with all applicable elements of final assembly (US location, minimum required activities conducted in the US and reporting of final assembly cost).”*

### **1.0 EXECUTIVE SUMMARY, Page 92**

**Question for FTA:** Does FTA agree the following sentence in the executive summary should be deleted from the Handbook: *“Provide a statement as to whether the rolling stock vehicle manufacturer meets the requirements of 49 CFR Part 663”?*

**Comments:** There is no reason to make such a statement. A quick read of 663 illustrates the point. The requirements of 49 CFR part 663 are all about the responsibilities placed upon the Recipient - **not** the vehicle manufacturer. This statement does not make sense and is misleading, inaccurate, and unnecessary. The Handbook guidance placing this responsibility on the auditor is a total waste of time and money, it is a redundant and unnecessary effort and expense.

**Recommended Action:** The entire sentence should be deleted from the Handbook.

**2.0 POST-DELIVERY AUDIT PROCEDURES, Page 92**

**Question for FTA:** Does FTA agree the following sentence needs to be modified to eliminate the phrase “including whether recipient’s staff or consultants were used?”

**Comments:** Why is this in the Handbook? It has no bearing on the audit, is not relevant, adds no value and is not required by the regulations anywhere. Typically, audit reports will bear the letterhead of the author making it abundantly clear indicate the party that conducted the audit. A look at the report cover will usually answer this question.

**Recommended Wording:** *“Provide a brief description of the procedures used to perform the overall audit of domestic content analysis and final assembly review.”*

**Question for FTA:** Does FTA agree the following sentence needs to be modified to address typically encountered situations surrounding the timing of the completion and release of the Resident Inspector’s Report, and to eliminate redundancy regarding the Buy America auditor’s objectives related to the review of the Recipient’s due diligence underlying the Post-Delivery Purchaser’s Requirements Certification?

**Comments:** The Handbook states: *“Include a brief statement about the procedures used to verify the Post-Delivery Purchaser’s Requirements Certification, including the presence of a resident inspector and confirmation of receipt and review of the resident inspector’s report, to determine compliance with Post-Delivery Purchaser’s Requirements Certification.”*

The Resident Inspector’s Report should cover the complete period of manufacture and all of the vehicles purchased. The Buy America Post-Delivery audit report is required to be completed and filed before title transfer or placement of the first production vehicle into service. The Buy America auditor can only review the Resident Inspector’s Report – if one is available, if it is complete, and if it has indeed addressed the applicable items related to final assembly. This technique has rather limited application. It offers potential to be effective in very small production quantities. The time period covered by the Resident Inspector’s Report does not typically align with the timing of the release of the Buy America Post-Delivery audit report. This time gap virtually eliminates the opportunity to rely on the Resident Inspector’s report. The Resident Inspector’s requirement is to be present “throughout the build”, and the Resident Inspector’s Report should reflect that – this requirement is reiterated in the Handbook no fewer than five times (pages 25, 27, 28, 29 and 30). An 800-railcar build may take up to four or five years of manufacturing time. The Buy America audit report is due before title transfer or placement of the first production railcar into service. This creates a serious time gap; and in these all too frequent situations, renders the Resident Inspector’s Report rather unusable as a tool to depend on for the observation of **Final Assembly** activities in relation to the timing of issuance of the Buy America Post-Delivery audit report. Here is a novel idea: The Buy America auditor could make a timely visit to the final assembly site and make their own observations about final assembly activities, location and cost.

Railcars and buses will be in service long before you get a complete resident inspector's manufacturing report unless the order is for a very small number of vehicles. The FTA requirement for the resident inspector's manufacturing report calls for a single manufacturing report per production order, not one for each railcar or bus as they are produced. 49 CFR 663.7 states the inspector was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Large railcar or bus orders take years to deliver, the post-delivery audit report must be completed before the vehicle goes into revenue service or transfer of title, and hence cannot wait until all buses are completed. A resident inspector's manufacturing report is intended to cover all buses or cars in the order so the timing is difficult or nearly impossible to complete a post-delivery audit and address the resident inspector's manufacturing report as the Handbook suggests, and as the CFR defines 663 definitions: (f) Audit means a review resulting in a report containing the necessary certifications of compliance with Buy America standards, purchaser's requirements specifications, and, where appropriate, a manufacturer's certification of compliance with or inapplicability of the Federal Motor Vehicle Safety Standards, required by section 319 of STURAA and this part.

**Recommended Wording:** *“Provide a summary addressing the Recipient’s Post-Delivery Purchaser’s Requirements Certification and the Recipient’s methods of review and analysis to determine whether the FTA requirements were satisfied. The Buy America auditor’s objectives are to determine if the Recipient met the requirements of the Post-Delivery Purchaser’s Requirements Certification. The Buy America auditor’s summary should conclude whether the:*

- *Recipient compared the manufacturer’s as-built specifications to the Recipient’s solicitation specifications to determine specifications were met.*
- *Recipient deployed a Resident Inspector and whether the Resident Inspector was present throughout the period of manufacture.*
- *Resident Inspector prepared the Resident Inspector’s Report as required.*
- *Resident Inspector’s Report contained all the requisite documentation.*
- *Observation and monitoring of the actual manufacturing and assembly of the vehicle as performed by the Recipient’s Resident Inspector.*
- *Documentation of manufacturing, assembly, QA processes applied during production of the vehicles.*
- *Verification and results of visual inspection and test sheets.*
- *Inspection and testing to demonstrate vehicles fulfill contract specifications.*
- *Recipient met all Post-Delivery Purchaser’s Requirements.”*

## **2.0 POST-DELIVERY AUDIT PROCEDURES, Page 92**

**Comments:** The Handbook states: “Include a brief statement about the procedures used to verify the Post-Delivery Purchaser’s Requirements Certification, including the presence of a resident inspector and confirmation of receipt and review of the resident inspector’s report, to determine compliance with Post-Delivery Purchaser’s Requirements Certification.”

The Post-Delivery Purchaser’s Requirements requires a determination that the vehicles as-built were built to the Recipient’s specifications, similar to the pre-award requirement, now based on actual as-built specifications. Post-delivery imposes a different layer of due diligence related to observation and monitoring of the actual manufacturing and assembly of the vehicle as performed by the Recipient’s Resident Inspector. Additionally, the post-delivery certificate is supported by the requisite documentation of manufacturing, assembly, QA et al in the Resident Inspector’s Manufacturing Report.

The regulations require the Recipient's Resident Inspector to be engaged in vehicle inspection "throughout the period of manufacture of the rolling stock." The Buy America Post-Delivery Audit report must be issued before the first vehicles go into service or before title transfer whichever comes first. Any sizable order (e.g., more than 10 vehicles) will likely result in some buses going into service (or having title transferred) long before all 10 vehicles have been manufactured. Here is where two different parts of the regulations conflict: 663.5 defines the end of post-delivery as the point in time when title to the rolling stock is transferred to the recipient or the rolling stock is put into revenue service, whichever is first. This ostensibly sets the 'due date' for the Buy America Post-Delivery Audit report. 663.7 calls for the Resident Inspector to be at the manufacturing site throughout the period of manufacture of the rolling stock. In practice, it becomes extremely difficult, albeit impossible for an audit report be timely (issued before title transfer or placement of vehicle into revenue service) and to encompass the Purchaser's Requirements certificate (according to the regulation, the Resident Inspector's report must address **all** vehicles built in the manufacturing period) when some vehicles are still being built while earlier produced vehicles are already in service.

This may be accomplished by reviewing the Resident Inspector Report, only when such a report is required, complete and available to the auditor before the completion of the Buy America Post-Delivery Audit.

**Recommended Wording:** *"Include a brief statement about the due diligence procedures applied by the Recipient to support its conclusion and certification of compliance with the Post-Delivery Purchaser's Requirements. This may include a review of the Recipient's documentation to support the presence of a resident inspector, receipt and review of the resident inspector's report, and the comparison of the vehicle's as-built specifications with the Recipient's technical specifications. This may be accomplished by reviewing the Resident Inspector Report, only when such a report is required, complete and available to the auditor before the completion of the Buy America Post-Delivery Audit."*

### **3.1 Verification of Domestic Content and Final Assembly Cost, Page 92**

**Question for FTA:** Does FTA agree the following sentence needs to be modified to stay focused on the goal and affirm the Buy America auditor's fundamental analysis of determining whether the domestic content requirement has been met: *"Provide a detailed summary of the auditor's review of the rolling stock vehicle manufacturer's Buy America worksheet and whether it includes all the typical components of the rolling stock being purchased per 49 CFR § 661.11"?*

**Comments:** A "detailed summary" - which is it? "detailed" or "summary"? This is unnecessary. There is no need to determine whether the worksheet includes all of the typical components of the rolling stock being purchased per 49 CFR § 661.11 – it only needs to take into account the relevant ones. The audit requirement is for the vehicle manufacturer to provide a worksheet that lists a sufficient number of domestic components that in the aggregate demonstrate the minimum required domestic content percentage has been exceeded. A bus may not have an air conditioning system in its specifications. A passenger railcar may not have an engine in its specifications. Accordingly, the worksheet need not contain **all** of the typical components listed in 661.11.

**Recommended Wording:** Provide a brief summary of the auditor's review of the rolling stock vehicle manufacturer's Buy America worksheet and whether the worksheet included the typical components of the rolling stock applicable to the vehicles being purchased per 49 CFR § 661.11 Appendix D.

**Question for FTA:** Does FTA agree the following sentence needs to be eliminated from the Handbook: *“State the total % domestic content claimed by the rolling stock vehicle manufacturer”*?

**Comments:** The auditor’s mission is to determine if vehicle percentage of domestic content as audited (not as presented by TVM) exceeded the required domestic threshold. The test is pass or fail. There is no extra credit within the FTA Buy America requirements for higher domestic content. There is no need to state the total domestic content percentage, unless it is required by the client, and then only if the TVM is willing to have that information disclosed in a public report, and provides written authorization to disclose such information.

**Question for FTA:** Will FTA please delete the entire sentence from the Handbook?

### **3.1 Verification of Domestic Content and Final Assembly Cost, Page 93**

**Question for FTA:** Does FTA agree the following sentence needs to be restructured and completed to clearly state the point it is attempting to make: *“Include information about the information and documentation reviewed by the auditor to verify the domestic content, including, but not limited to, whether information about the breakdown of components, subcomponents, manufacture of origin, percent cost or actual cost of components and percent cost or actual cost of corresponding subcomponents”*?

**Comment:** This text is an incomplete sentence.

**Question for FTA:** Will FTA please restate the point so one can understand what is being said here?

**Question for FTA:** Does FTA agree the following sentence needs to be stricken from the Handbook: *“Provide a brief summary about the formulas and calculations used to determine domestic content and whether it is accurate”*?

**Comment:** This text is irrelevant with no value added. The auditor’s mission and responsibility is to determine if vehicle percentage domestic content ***as audited*** (not as presented by TVM) exceeded the required domestic content threshold. The formulas and calculations and their accuracy is irrelevant.

**Question for FTA:** Does FTA agree the following sentence needs to be deleted from the Handbook: *“Provide a brief summary about the formulas and calculations used to determine domestic content and whether it is accurate”*?

**Question for FTA:** Does FTA agree the following sentence needs to be deleted from the Handbook: *“Provide any other unique details about the manufacturer’s Buy America worksheet”*?

**Comments:** The text is irrelevant with no value added. The auditor’s mission is to determine if vehicle percentage domestic content ***as audited*** (not as presented by TVM) exceeded the required domestic content threshold.

**Question for FTA:** Does FTA agree the following sentence should be deleted from the Handbook: *“Provide any other unique details about the manufacturer’s Buy America worksheet”*?

**Question for FTA:** Does FTA agree the following sentence needs to be expanded to emphasize the significance of establishing total material cost of the vehicle: *“Provide a summary of the auditor’s review of the bill of material and whether it was used to verify components”*?

**Comments:** State whether the bill of material was used by the auditor to establish total material cost and how the auditor satisfied him/herself the bill of material provided a reliable total material cost. If something other than the bill of material was used as the basis to establish total material cost, auditor should identify what records were relied upon for establishing total material cost and describe what the auditor did to satisfy him/herself the alternate information used provided a reliable total material cost.

**Recommended Wording:** Insert the following sentences after the sentence *“Provide a summary of the auditor’s review of the bill of material and whether it was used to verify components.”*

*“State whether the bill of material was used by the auditor to establish total material cost and how the auditor satisfied him/herself the bill of material provided a reliable total material cost. If something other than the bill of material was used as the basis to establish total material cost, auditor should identify what records were relied upon for establishing total material cost and describe what the auditor did to satisfy him/herself the alternate information used provided a reliable total material cost.”*

**Question for FTA:** Does FTA agree the following sentence needs to be Provide a summary of the auditor’s review of purchase orders or paid invoices of components and whether costs were traceable to the rolling stock manufacturer’s Buy America domestic content worksheet?

**Comments:** This text is irrelevant with no value added; the auditor’s mission is to determine if vehicle percentage domestic content **as audited** (not as presented by TVM) exceeded the required domestic content threshold. Typically in the course of the audit, many purchase orders and paid invoices are traceable to the manufacturer’s Buy America domestic content worksheet and many are not. The auditor’s mission is to cull through the documentation until such time that he/she has verified domestic content percentage of the vehicle that exceeds the threshold in effect. Time and effort to describe what was traceable and what was not is merely a waste of time, effort and money. Such an exercise does contribute to the core mission. In auditing actual costs as is the case in a Post-Delivery audit, actual invoices provide the best verification of the cost of a component or subcomponent. Purchase orders represent an order of goods only, whereas an invoice represents goods actually delivered and hence a more accurate representation of cost. Invoices are generated by the suppliers whereas purchase orders are generated by the vehicle manufacturer. Hence, the invoice provides the most reliable confirmation of cost, and should be the source document of choice for the auditor in a post-delivery audit.

**Recommended Wording:** *“Provide a summary of the auditor’s review of paid invoices of and other sources documents used by the auditor to verify component and subcomponent costs.”*

**Question for FTA:** Does FTA agree the following sentence needs to be modified to address the objective as set forth in the Buy America regulations: *“Provide a summary statement affirming the manufacturer’s claimed domestic content based on the independent analysis”*?



**Comments:** This text is irrelevant with no value added; the auditor’s mission is to determine if vehicle percentage of domestic content as audited (not as presented by TVM) exceeded the required domestic threshold. The test is pass or fail. There is no extra credit within the FTA Buy America requirements for higher domestic content. There is no need to state the total domestic content percentage, unless it is required by the client, and then only if the TVM is willing to have that information disclosed in a public report, and provides written authorization to disclose such information.

**Recommended Wording:** *“Provide a summary statement affirming the whether or not the manufacturer complied with the domestic content requirements based on the auditor’s independent analysis.”*

### **3.1 Verification of Domestic Content and Final Assembly Cost, Page 93**

**Question for FTA:** Does FTA agree the following sentence needs to be modified to eliminate reference to sampling the supplier certifications: *“Provide a brief summary about whether the manufacturer has signed certifications from component suppliers certifying US content and a statement about the **sampling** of component supplier certifications”?*

**Comments:** The Handbook’s statement sends the wrong signal and is misleading. The Buy America Domestic Content calculation is already only a sample (i.e., you must verify **Domestic Content** > 60%, 65%, 70% as applicable (not 100%). Accordingly, it is imperative that the auditor analyze 100% of the supplier certifications that support the Domestic Content percentage and not a sampling. Case in point, if a supplier has moved its manufacturing location to Mexico and you fail to review that certification because it was not in your sample; you have incorrectly counted their product as compliant when a review of the certification shows it is not compliant; you have failed as the auditor to do your due diligence in the fundamental test of auditing the domestic content and verify that the percentage does indeed exceed the minimum required percentage.

**Recommended Wording:** *“Provide a brief summary about whether the manufacturer provided signed certifications from component suppliers certifying US content and US manufacturing location. Include a statement addressing the auditor’s testing of component supplier certifications, and a conclusion that the auditor tested and found compliant 100% of the components supplier certifications for all components included in the auditor’s calculation of domestic content.”*

**Question for FTA:** Does FTA agree the following sentence needs to be modified to reflect the core objective of the Buy America Post-Delivery audit: *“Provide a final statement about whether the Rolling Stock Manufacturer’s Buy America Worksheet is accurate and documented”?*

**Comments:** The auditor’s role is to determine if the **Domestic Content** percentage as verified by the audit exceed minimum required **Domestic Content** percentage content and final assembly requirements have been met. There is no requirement and hence no need to affirm the TVM’s claimed **Domestic Content** percentage, nor is there any requirement or need to determine if, and provide a statement on whether the TVM’s **Domestic Content** worksheet is accurate and documented. Auditor must review the documentation as provided by the TVM (i.e., the invoices and supplier certifications to validate a domestic content percentage that is greater than the required percentage applicable).

**Recommended Wording:** Provide a brief summary about whether the Auditor determined the Domestic Content percentage as verified by the audit exceeded the minimum required Domestic Content percentage content and whether the final assembly requirements have been met.

**Question for FTA:** Does FTA agree the sentence *“Provide a final statement about whether the Rolling Stock Manufacturer’s Buy America Worksheet is accurate and documented.”* Should be deleted?

**3.2 Verification of U.S. Final Assembly Location and Activities, Page 93**

**Question for FTA:** Does FTA agree the following sentence needs to be modified to include the third required element of final assembly (cost of final assembly): *“Provide a brief summary confirming the U.S. final assembly location and how final assembly activities correspond to minimum final assembly activities in 49 CFR § 661.11 Appendix D. Make reference to the Resident Inspector’s report that details this information (as an Appendix)”*?

**Comments:** No mention of analysis of final assembly costs in post-delivery. The Resident Inspector’s report may or may not detail this information as an Appendix or in any other form. Furthermore, the report may not be complete and or available to the auditor, so reference to it is eliminated in the suggested wording below. Also, this is not necessary if the auditor did their own due diligence regarding final assembly; also resident inspector’s manufacturing report is likely not complete before the BUY AMERICA POST-DELIVERY report is due (i.e., before title transfer or vehicle into service).

**Recommended Wording:** *“Provide a brief summary describing what steps the auditor took to confirming the U.S. final assembly location, confirm how final assembly activities correspond to minimum final assembly activities in 49 CFR § 661.11 Appendix D, and to confirm the reasonableness of final assembly cost.”*

**4.0 POST-DELIVERY PURCHASER’S REQUIREMENTS CERTIFICATION, Page 93**

**Question for FTA:** Does FTA agree the following sentence needs to be revised: *“Provide a summary that this section addresses the manufacturer’s Post-Delivery Purchaser’s Requirements Certification. Provide a brief summary on the methods of review and analysis to determine if the requirements were satisfied, including presence of the resident inspector, resident inspector’s report, and verification and results of visual inspection and test sheets”*?

**Comments:** It is neither the Buy America auditor’s responsibility nor requirement to reiterate the contents of the Resident Inspector’s Report (e.g., comparison of transit authority’s technical specifications to the as-built specifications, presence of the resident inspector, resident inspector’s report, and verification and results of visual inspection and test sheets). The auditor must also contend with the timing issue described above – the Resident Inspector’s Report and all of its requisite contents may not be completed and/or available before the implicit deadline for issuing the Buy America Post-Delivery Audit report. If everything contemplated in the Resident Inspector’s Report is done and compliant prior to the issuance of the Buy America Post-Delivery Audit report, and the report is made available to the auditor, then the auditor can review the report and its contents and appendices to determine if all required elements are present and all requirements are met. Then the auditor can conclude on whether all of the post-delivery purchaser’s requirements were met. If the Resident Inspector’s report is incomplete or deficient or if the Inspector has identified out of compliance issues, the Post-Delivery Purchaser’s Requirements certificate cannot be signed off by the Transit Authority. This would also prevent the auditor from concluding on the Transit Authority’s compliance with Purchaser’s Requirements.

The statements and conclusions regarding the Transit Authority's compliance with Purchaser's Requirements can only be addressed in the Buy America Post-Delivery Audit report if the due diligence work contemplated in the Purchaser's Requirements Certificate is indeed finished and complete and the report is made available to the auditor prior to the issuance of the Buy America Post-Delivery Audit report. For this reason, the Handbook should characterize this paragraph of guidance as optional content for the audit report. A properly prepared and documented resident inspector's report must stand on its own, and must address the elements recited in the CFR. It is the product of the work of the on-site inspector not the auditor. The number of inspectors a Transit Authority placed on site, whether they were full time or part time is not required by any regulation or guidance nor do they contribute to the Buy America auditor's mission – to determine compliance with the post-delivery Buy America audit requirements. The roles and requirements of the resident inspector are clearly spelled out in the regulations and when clearly executed and documented provide the foundation for the **Transit Authority** to review the report and to issue the Buy America Post-Delivery Purchaser's Requirements certificate. The number of inspectors and the amount of time they spend inspecting is up to the **Transit Authority**.

**Recommended Wording:** *“If the underlying due diligence required has been completed and is made available to the Buy America auditor, the audit report should address the Transit Authority's Post-Delivery Purchaser's Requirements Certification. The Buy America auditor should obtain and review the documentation available to substantiate the Transit Authority's certification of Post-Delivery Purchaser's requirements. The auditor should obtain and review the Resident Inspector's Report for the required attributes. The Resident Inspector's Report should document the following:*

- The presence of the resident inspector throughout the period of manufacture of the vehicles being purchased.*
- The resident inspector's comparison of the vehicle manufacturer's as-built technical specifications to the finalized technical specifications of the Transit Authority.*
- Observation and monitoring of the actual manufacturing and assembly of the vehicle as performed by the Recipient's Resident Inspector.*
- Documentation of manufacturing, assembly, QA processes applied during production of the vehicles.*
- Verification and results of visual inspection and test sheets.*
- Inspection and testing to demonstrate vehicles fulfill contract specifications.*
- Recipient met all Post-Delivery Purchaser's Requirements.*

*The auditor should determine the review of the resident inspector's report was completed by the Transit Authority. Then the auditor can provide a brief conclusion whether the Buy America Post-Delivery Purchaser's Requirements were satisfied.”*

#### **4.0 POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION, Page 93**

**Question for FTA:** Does FTA agree the following sentence needs to be modified to accurately reflect the party responsible for certifying the Post-Delivery Purchaser's Requirements is the Recipient aka the Transit Authority and **not** the Vehicle Manufacturer: *“Provide a summary statement as to whether the Rolling Stock Vehicle Manufacturer meets the Post-Delivery Purchaser's Requirements, as stated in 49 CFR Part 663 Pre-Award and Post-Delivery Audits of Rolling Stock Purchases”?*

**Comment:** The Handbook's statement is inaccurate – satisfying Purchaser's (the Purchaser - **not** the manufacturer!) Requirements are clearly and only the responsibility of the Transit Authority; not the TVM.

**Recommended Wording:** *“Provide a summary statement as to whether the Recipient / Transit Authority meets the Post-Delivery Purchaser's Requirements, as stated in 49 CFR part 663 Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.”*

**4.1 Assignment of Resident Inspector to Final Assembly Location; Verification of Manufacturer's Capability and Capacity, Page 93**

**4.2 Inspection Testing and Commissioning to Show Vehicles Fulfill Contract Specifications, Page 94**

**Question for FTA:** Does FTA agree these two sections could be eliminated entirely from the Handbook as the relevant issues are fully addressed in 4.0 **POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION** recommended wording above?

**Comments:** The sections as written contain inaccurate statements; are redundant in part; and require the Buy America auditor and audit report to unnecessarily duplicate what has already been accomplished by the Resident Inspector. An example: *“provide a summary of the inspector's manufacturing report and how it demonstrates the TVM's capability and capacity.”* Why do this at post-delivery? These are **Pre-Award** requirements of due diligence the **Transit Authority** must complete at pre-award stage.

**Recommended Action:** Delete both of the following sections: 4.1 *Assignment of Resident Inspector to Final Assembly Location; Verification of Manufacturer's Capability and Capacity, Page 93*; and 4.2 *Inspection Testing and Commissioning to Show Vehicles Fulfill Contract Specifications, Page 94*.

**Comment:** The Handbook's header statement is inaccurate – **Verification of Manufacturer's Capability and Capacity** is required for the Pre-Award Purchaser's Requirements certificate; not the Post-Delivery Purchaser's Requirements certificate.

**Recommended Wording:** *“4.1 Assignment of Resident Inspector to Final Assembly Location”*

**C.2 Post-Delivery Audit Reports, 3.1 Verification of Domestic Content and Final Assembly Cost, Page 93 Footnote 46**

**Comment:** Without signed certificates from suppliers, how can an auditor verify compliance (other than on-site Component supplier audits that would be time-consuming, expensive and unlikely)?

**Question for FTA:** Does FTA agree *“; signed certificates from suppliers is not requirement...”* should be changed to read *“; signed certificates from suppliers is not a requirement...”*?

**5.0 FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS CERTIFICATION) (IF APPLICABLE), Page 94**

**Question for FTA:** Does FTA agree the following sentence needs to be modified to eliminate the reference to non-existent Appendix 6: *“Provide a summary statement that the rolling stock vehicle manufacturer's actual FMVSS self-certification sticker information was obtained and reviewed against a sample FMVSS sticker and was found to include the content required for the Post-Delivery Audit. (Ref. Appendix 6)”*?

**Comments:** There is no Appendix 6. The FMVSS requirements in 49 CFR 571 apply to motor vehicles and motor vehicle equipment only. The standards do not apply to rail cars. **Transit Authority** obtains FMVSS certification from TVM at post-delivery. Inspector confirms plate or sticker is affixed to each vehicle. Auditor confirms **Transit Authority** received a BUY AMERICA POST-DELIVERY FMVSS certification and obtains sample images of the builder's plate as affixed in the completed vehicle. Inspector verifies 100% that all vehicles approved for shipment have the FMVSS sticker (builder's plate) affixed to them.

**Recommended Wording:** *"Provide a summary statement that the rolling stock vehicle manufacturer's actual FMVSS self-certification sticker information was obtained and reviewed against a sample FMVSS sticker and was found to include the content required for the Post-Delivery Audit. The Resident Inspector should verify that all vehicles approved for shipment have the FMVSS sticker (builder's plate) affixed to them. The FMVSS requirements in 49 CFR 571 apply to motor vehicles and motor vehicle equipment only. The standards do not apply to rail cars."*

#### **6.0 POST-DELIVERY AUDIT CONCLUSION, Page 94**

**Question for FTA:** Does FTA agree the following sentence needs to be modified to reflect the most typical and common situations: *"Provide a summary regarding how the procedures used, analysis performed, and results found on Post-Delivery Audit of the rolling stock manufacturer indicate that the Buy America Compliance and the Purchaser's requirements certification have been satisfied"?*

**Comments:** Refer to comments above relating to the quantity of vehicles in the production order and the timing of the release of the audit report and the timing of the completion of the Resident Inspector's Report. Only on rare occasions have I had the luxury of a complete and comprehensive Resident Inspector's Report available to me. These few instances have been on pilot vehicle orders that preceded a serial production run, and have occurred fewer than 2% of the time in our experience conducting Buy America Post-Delivery audits.

The timing of the transit authority's completion of the Buy America post-delivery purchaser's requirements certification is problematic as the requirement of 49 CFR 663 do not recognize the reality of a large railcar or bus order. The resident inspector is supposed to be present throughout the build, monitor the manufacture of the rolling stock and complete their (resident inspector's) manufacturing report. It would difficult if not impossible to write such a report before the completion of the build. The CFR requires the BUY AMERICA POST-DELIVERY be completed before title is passed and/or vehicle is placed into revenue service whichever comes first. Cite: §663.31 Post-delivery audit requirements.

**Recommended Wording:** *"Provide a conclusion Buy America Post-Delivery Audit report that states whether the results of the Post-Delivery Audit of the rolling stock manufacturer indicate that the Buy America Post-Delivery requirements were met. If the underlying due diligence required has been completed and is made available to the Buy America auditor, the audit report conclusion should indicate the Transit Authority's Post-Delivery Purchaser's Requirements Certification were met."*