Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, N.W., Washington, D.C. 20420, (202) 389–3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

By direction of the Administrator.

Dated: September 9, 1983.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 83-25175 Filed 9-14-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 180
Thursday, September 15, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, September 12, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding the purchase of additional office space in the Ecker Square Condominium Office Building located in San Francisco, California, and a memorandum regarding the leasing of office space in Dallas, Texas, to facilitate the expansion of the Division of Liquidation's Southwest Area Liquidation Office.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: September 12, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1291-83 Filed 9-13-83; 11:31 am]

BILLING CODE 6714-01-M

2

FEDERAL ELECTION COMMISSION

Date and time: Tuesday, September 20, 1983 at 10:00 A.M.

Place: 1325 K Street, N.W., Washington, D.C.

Status: This meeting will be closed to the public.

Items to be discussed: Compliance. Litigation. Audits. Personnel.

Date and time: Thursday, September 22, 1983 at 10:00 A.M.

Place: 1325 K Street, N.W., Washington, D.C. (Fifth Floor).

Status: This meeting will be open to the public.

Matters to be considered: Setting of dates of future meetings; correction and approval of minutes; eligibility report for condidates to receive presidential primary matching funds; administrative terminations; 1984 management plan, routine administrative matters.

Person to contact for information: Mr. Fred Elland, Information Officer, telephone: 202-523-4065.

Lena L. Stafford,

Acting Secretary of the Commission.

[S-1296-83 Filed 9-13-83; 3:49 pm]

BILLING CODE 6715-01-M

3

FEDERAL RESERVE SYSTEM

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 40487, Wednesday, September 7, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Monday, September 12, 1983.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added: Legislative proposals relating to banking structure. (This item was originally announced for a meeting on September 7, 1983.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: September 12, 1983.

James McAfee,

Associate Secretary of the Board.

[S-1289-83 Filed 9-12-83; 4:56 pm]

BILLING CODE 6210-01-M

4

FEDERAL TRADE COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, September 15, 1983.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Open.

Matters To Be Considered

(1) Consideration of proposal to allow cross-examination by Non-attorney experts.

(2) Public session concerning current procedures and ways to improve them, to be followed by closed session concerning effect of proposed procedures on current law enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Information, (202) 523-1892; Recorded Message: (202) 523-3806.

[S-1292-83 Filed 9-13-83; 3:20 pm]

BILLING CODE 6750-01-M

5

FEDERAL TRADE COMMISSION

TIME AND DATES: 3:00 p.m., Friday, September 16, 1983.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of Proposed Trade Regulation Rule on Credit Practices.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Information: (202) 523-1892; Recorded Message: (202) 523-3806.

[S-1293-83 Filed 9-13-83; 3:20 pm]

BILLING CODE 6750-01-M

6

POSTAL SERVICE

At its meeting on September 7, 1983, the Board of Governors of the United States Postal Service unanimously voted, pursuant to section 6.4 of the bylaws of the Board (39 CFR 6.4), to hold a meeting by conference telephone call at 12:30 p.m. (EDST) on Friday, September 30, 1983, for the sole purpose of resuming consideration of the recommended decision of the Postal Rate Commission on third-class bulk rates for nonprofit mail in Docket No. R80-1, dated August 26, 1983. The conference telephone call will emanate from the Benjamin Franklin Room, 11th floor, Postal Service Headquarters, 475

L'Enfant Plaza West, S.W., Washington, D.C.

It is expected that Governors Hardesty, Babcock, Camp, Hughes, McKean, Ryan, Sullivan and Voss will participate in the meeting by conference telephone while Postmaster General Bolger; Deputy Postmaster General Finch; Secretary of the Board Harris; General Counsel Cox; Senior Assistant Postmaster General Coughlin; and Counsel to the Governors Califano will be at Postal Service Headquarters.

The Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this meeting is exempt from the open meeting requirements of the Government in the Sunshine Act (5 U.S.C. 552b[b]) because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board determined further that, pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt, because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to sections 552(b)(c) (3) and (10) of title 5 and section 410(c)(4) of title 39, United States Code, and sections 7.3(c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 245-3734.

David F. Harris,

Secretary.

[S-1294-83 Filed 9-13-83; 3:21 pm]

BILLING CODE 7710-12-M

7

SYNTHETIC FUELS CORPORATION

ENTITY: United States Synthetic Fuels Corporation.

ACTION: Notice of meeting.

SUMMARY: Interested member of the public are invited to attend and observe a meeting of the Board of Directors of the United States Synthetic Fuels Corporation to be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of Section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 871(f)(1)), and Section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close a portion of the meeting pursuant to Article II, Section 4 of the Corporation's By-laws, Section 116(f) of said Act and Sections 4 and 5 of said policy.

Matters to be Considered

Open Session

1. Chairman's Opening Remarks.
2. Approval of Minutes.
3. Operations Report of Acting Executive Vice President.
4. Report of the Compensation Committee.
5. Amendment of Competitive Eastern Province and Eastern Region of the Interior Province Bituminous Coal Gasification Solicitation.

Closed Session

6. Preliminary Qualification Statements Submitted under Competitive Eastern Province and Eastern Region of the Interior Province Competitive Bituminous Coal Gasification Solicitation.
7. Targeted Solicitation for Coal/Liquid Mixture Projects.
8. Report on Analysis of Great Plains Coal Gasification Project for DOE.
9. Project Strength Reviews—Eastern Shale Projects.
10. Project-Specific Evaluations and Negotiations.
11. Release of Exempt Minutes of Board Meetings.

In addition, the Board of Directors will consider such other matters as may be properly brought before the meeting.

TIME AND DATE: 9:00 a.m., September 22, 1983.

PLACE: 2121 K Street, N.W., Washington, D.C., Room 503.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. Owen J. Malone, Assistant Secretary, (202) 822-6336.

United States Synthetic Fuels Corporation.

Leonard C. Axelrod,

Acting Executive Vice President.

September 12, 1983.

[S-1285-83 Filed 9-13-83; 3:22 pm]

BILLING CODE 0000-01-M

8

U.S. RAILWAY ASSOCIATION

DATE AND TIME: September 22, 1983; 10:00 a.m.

PLACE: Board Room, Suite 7200, Seventh Floor, 955 L'Enfant Plaza North, SW., Washington, D.C.

STATUS: The first portion of the meeting will be closed to the public; the second portion will be open.

Matters To Be Considered by the USRA Board of Directors

Portion Closed to the Public (10:00 a.m.)

1. Litigation Report.
2. Review of Conrail Confidential and Proprietary Financial Information.
3. Alaska Railroad Valuation Report.

Portion Open to the Public (10:30 a.m.)

4. Approval of Minutes of June 30, 1983 Annual Meeting of the Board of Directors.
5. Delaware & Hudson Request for Waiver of Mortgage Agreement to Sell Property.
6. Conrail Monitoring Indicators.

CONTACT PERSON FOR MORE INFORMATION: Alex Bilanow, (202) 488-8777, ext. 503.

[S-1290-83 Filed 9-13-83; 9:34 am]

BILLING CODE 8240-01-M

federal register

Thursday
September 15, 1983

Part II

Department of Transportation

Urban Mass Transportation Administration

Buy America Requirements

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Parts 660 and 661

[Docket No. 83-B]

Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule sets out requirements to implement Section 165 of the Surface Transportation Assistance Act of 1982. Section 165 provides, with exceptions, that funds authorized by the Surface Transportation Assistance Act of 1982, Title 23 of the United States Code, the Urban Mass Transportation Act of 1964, as amended, or the Surface Transportation Assistance Act of 1978 may not be obligated for mass transportation projects unless steel, cement, and manufactured products used in such projects are produced in the United States. In addition to setting out final regulations, UMTA is also requesting comments on the regulations, and various topics concerning implementation of the statutory provision.

DATES: The regulations are effective January 6, 1983. Comments must be received on or before November 14, 1983.

ADDRESS: Comments should be submitted to UMTA Docket No. 83-B, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street, S.W., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 8:30 A.M. and 5:00 P.M., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9228, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-4063.

SUPPLEMENTARY INFORMATION:

Immediate Effective Date and Consideration of Comments: On January 6, 1983, the President signed into law the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424). Under the Administrative Procedure Act, 5 U.S.C. 553(d), publication of a rule must normally take place 30 days before the rule's effective date. However, exceptions to this normal requirement are permissible in the case of a substantive rule which the agency finds for good cause must be made effective less than 30 days after publication. Since the statutory provision which gives rise to these regulations became effective on January 6, 1983, it has been determined that circumstances warrant the issuance of a final rule with a retroactive effective date so as to immediately implement the statutory provision. This same reason makes it impracticable to publish a Notice of Proposed Rulemaking, and provide for public comment prior to issuing this rule. Comments are, however, solicited on the regulations being adopted, as well as on several possible changes to the regulations that are discussed below. UMTA will consider the comments received and will make a decision with respect to changing these regulations within six months of the issuance of the final rule. Earlier changes may be made with respect to specific proposals if the comments indicate a need for earlier action. In addition, notice and comment are unnecessary in this case since, under the exception in 5 U.S.C. 553(a)(2), the requirements of 5 U.S.C. 553 do not apply to a matter relating to grants.

Regulatory Impact Analysis: This regulation is classified as a "major" regulation under Executive Order 12291, which calls for a Regulatory Impact Analysis to be prepared for major rules. Because of the need to publish a final rule immediately, a Regulatory Impact Analysis could not be completed prior to the issuance of this final rule. However, UMTA will prepare a Regulatory Impact Analysis within 180 days of publication of this final rule.

Environmental Impact Evaluation: This rule will have no significant environmental impact.

Paperwork Reduction Act: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping provisions that are included in this final rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Statutory Background: Section 165 of the Surface Transportation Assistance Act of 1982 provides, with exceptions, that Federal funds may not be obligated for mass transportation projects unless steel, cement, and manufactured products used in such projects are produced in the United States. There are four exceptions to this basic requirement. The first is that the requirement will not apply if its application is not in the public interest. The second is that the requirement will not apply if materials and products being procured are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The third is that the requirement will not apply in the case of the procurement of buses and other rolling stock (including train control, communication, and traction power equipment) if the cost of components which are produced in the United States is more than 50 percent of the cost of all components of the vehicles or equipment, and if final assembly takes place in the United States. The fourth is that the requirement will not apply if the inclusion of domestic material will increase the cost of the overall project contract by more than 10 percent in the case of projects for the acquisition of buses and other rolling stock; and 25 percent in the case of all other projects.

Section 165 of the Surface Transportation Assistance Act of 1982 applies to contracts utilizing UMTA funds obligated after January 6, 1983. Contracts utilizing funds obligated prior to January 6, 1983, are governed by Section 401 of the Surface Transportation Assistance Act of 1978, and the regulations in 49 CFR Part 660. Section 165 repealed Section 401. The regulations being adopted here under Section 165 (49 CFR Part 661) apply to contracts utilizing UMTA funds obligated after January 6, 1983. However, under the public interest exception contained in Section 165(b)(1), certain contracts entered into prior to January 6, 1983, but necessitating funds obligated after that date, will be covered by the regulations in 49 CFR Part 660.

Discussion of regulations and request for comments: In developing this regulation, UMTA utilized many of its Buy America regulations in 49 CFR Part 660, which implemented Section 401 of the Surface Transportation Assistance Act of 1978.

While we feel that the regulations are generally self-explanatory, there are some items which should be explained in more detail. In addition, we are specifically requesting comments on several aspects of these regulations and these are set out below. We will take further regulatory action based on our analysis of the comments received.

These new requirements will apply to *all* third party contracts. The 1978 UMTA Buy America requirements only applied to third party contracts of over $500,000. UMTA specifically requests information as to the impact of applying the Buy America requirements to all third party contracts, and not just to those of over $500,000. UMTA is particularly interested in receiving

information as to the impact that this change will have on the procurement of replacement parts. The general applicability of the regulations is to all monies obligated by UMTA after January 6, 1983 (the effective date of the Surface Transportation Assistance Act of 1982). Specific exceptions are set out in the regulations, and others will be addressed on a case-by-case basis.

Any type of equipment used by a contractor to produce the material or item being procured under the requirements of these regulations is not covered by the regulations. For example, a piece of construction equipment used at a construction site need not comply with the regulations. In addition, temporary supporting materials, such as soldier piles, which are removed at the end of construction, are not within the scope of the regulations. In addition, if an item is used in the construction process as an aid to construction and remains at the construction site but serves no purpose in the completed product, then the requirements do not apply to that item.

In Section 661.3 of the regulations, UMTA has defined the terms "manufactured product" and "manufacturing process." It was felt necessary that we set out these definitions immediately since Section 165 applies, with exceptions, to all manufactured products purchased with UMTA funds obligated after January 6, 1983. We are specifically requesting comments on our definitions, and request that comments provide alternative definitions for our consideration.

Section 165(b)(4) of the Surface Transportation Assistance Act of 1982 sets out an exception to the general requirements if inclusion of domestic material will increase the cost of the overall project contract by more than 10 per centum in the case of projects for the acquisition of rolling stock, and 25 per centum in the case of all other projects. Since train control equipment, communication equipment, and traction power equipment are listed in the same statutory section as rolling stock (Section 165(b)(3)), and their procurement is governed by the same requirements as rolling stock, we will apply the 10 percent differential in cases of their acquisition rather than the 25 percent differential.

Section 661.7(b) of the regulations provides that a public interest exception may be granted by the UMTA Administrator on a case by case basis after consideration of all appropriate factors. UMTA specifically requests comments on whether general public interest exceptions should be granted (see discussion of "spare parts" below), and if they are granted, what they should cover. UMTA is specifically requesting comments as to what factors should be considered in the granting of the public interest exception.

UMTA also requests comments concerning the circumstances in which public interest waivers should be published in the **Federal Register** for comment. During discussion of the Conference Report on the Surface Transportation Assistance Act of 1982, there was a floor statement that UMTA should publish a notice in the **Federal Register** giving all details pertaining to a public interest exception request and allow a 30 day notice period for comment on the request. We do not, at this time, believe that publication of requests seeking a public interest exception is necessary in all cases. This publication requirement would be time consuming and could cause undue delays in procurement and impose unnecessary administrative burdens. We have not set out procedures in the regulations for publishing public interest exception requests in the **Federal Register**. However, UMTA may use such a procedure where the exception requested involves important policy considerations or is controversial. In all other cases, the exception requests will be made available for public inspection. Any comments received will be considered before UMTA acts on the request.

In January 1981, UMTA issued a general public interest waiver under Section 401 of the Surface Transportation Assistance Act of 1978 that provided that foreign-sourced spare parts, which are end-products purchased as part of the same contract for a major capital item, were granted an automatic waiver if their total cost was 10 percent or less of the overall project contract cost. The waiver was issued in order to provide for compatibility of parts, and it was considered in the public interest that this compatibility exist since it promotes efficiency and economy. UMTA is issuing a similar exception under Section 165(b)(1) of the Surface Transportation Assistance Act of 1982, if the items listed in Section 165(b)(3) are being procured. UMTA specifically requests comments on whether this exception should be continued.

In § 661.11(g) of the regulations, UMTA states that the final assembly requirement will be presumed to be met if the cost of final assembly is at least 10 percent of the overall project contract cost. UMTA specifically requests comments on this presumption, and requests comments on whether any other presumptions concerning final assembly should be set out in the regulations, and whether UMTA should attempt to define final assembly. Suggested definitions of "final assembly" are specifically requested. UMTA also specifically requests comments on whether the 10 percent standard is a realistic standard. It has come to our attention that the cost of final assembly in many bus contracts is below the 10 percent level, but that the activities performed during final assembly are meaningful, and meet the intent of the Buy America requirements.

In § 661.11 of the regulations, UMTA sets out listings of typical train control equipment, communication equipment, and traction power equipment. It is specifically stated that these listings are not all inclusive. The listings include both on-board and wayside equipment, and the listing for communication equipment applies to both rail and bus communication equipment. It should be noted that the listing of traction power equipment specifically excludes steel power or third rails. Comments on this exclusion are requested. UMTA specifically requests comments concerning additions to and/or deletions from these listings.

Section 165(d) of the Surface Transportation Assistance Act of 1982 specifically provides that State buy national requirements that are more restrictive than the Federal requirements are not only permitted, but must be given deference by UMTA. Since fiscal year 1981, Congress has directed UMTA to give deference to State requirements, but allowed UMTA to condition its participation in procurements governed by State law on the use of the waivers under Section 401 of the Surface Transportation Assistance Act of 1978. Under Section 165, UMTA is not given the flexibility to use the Federal waiver or exception provisions to avoid more restrictive State laws, and, therefore, even if one of the exceptions under Section 165(b) would apply, UMTA must allow a State to impose its law if it is stricter than the Federal law set out in Section 165. It should be noted that this provision only allows a State to impose a stricter buy national provision, and does *not* allow a State to impose a buy State or buy local provision on a procurement utilizing UMTA funds.

Treatment of Subcomponents

In January 1981, UMTA issued a Notice of Proposed Rulemaking (46 FR 5815) concerning proposed changes to its Buy America regulations implementing Section 401 of the Surface Transportation Assistance Act of 1978. One of the proposed changes would

have permitted subcomponents manufactured in the United States that receive Customs Bureau tariff exemptions to retain their domestic identity for purposes of determination of origin under Buy America. Final action on this proposed change was never taken. Since we received several comments concerning this proposal, and in view of the statutory changes that have taken place, we have not included that proposed provision in our regulations implementing Section 165 of the Surface Transportation Assistance Act of 1982. However, we are considering this provision for our new regulations, and thus again request comments. Set out below is a full description of the proposal.

In permitting manufacturers to include the cost of domestic subcomponents in the fifty percent test of Section 165, UMTA would utilize an existing Bureau of Customs procedure. A review of the U.S. Tariff Schedules reveals that Item 807.00 implements a legislative exemption from customs duty of those components which are products of the United States that have been assembled abroad into articles if those United States products: (a) Were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting. The duty imposed on such manufactured articles is computed by subtracting the cost of value of the United States products from the duty that is applicable to the full value of the imported articles. The Bureau of Customs regulations implementing Item 807.00 are set out at 19 CFR 10.11–10.24. An importer who desires to take advantage of this exception files documentation identifying the United States components in the assembled product. This determination of value of the U.S. subcomponents utilizing the customs approach is considered a suitable substitute for the simple "origin" test contained in the regulations being adopted here (§ 661.11). Under the proposed approach, United States subcomponents would not need to lose their identity simply because they had been sent abroad to be assembled into higher components.

The proposal would permit United States subcomponents that receive tariff exemptions to retain their domestic identity for purposes of determining origin of end-products. The cost of subcomponents that receive tariff exemptions would be included in the computation of domestic components. The cost of the foreign components, after subtracting the cost of such subcomponents, would be included in the computation of non-domestic components. This approach would provide more flexibility to end-product manufacturers, and would provide an advantage to U.S. subcomponent manufacturers and their workers.

In evaluating whether this provision should be adopted, UMTA will utilize the comments submitted in response to its 1981 Notice of Proposed Rulemaking in addition to those received as a result of this request for comments.

It must be noted that this proposed change would only apply to the procurement of buses and other rolling stock (including train control, communication, and traction power equipment) since these are the only procurements utilizing the component test.

In addition to allowing U.S. subcomponents to be included in the calculation of domestic components, UMTA is also considering requiring that foreign sourced subcomponents that are used in manufacturing domestic components retain their identity for the purposes of computing foreign component costs.

In making this proposal, UMTA specifically requests comments on the following:

1. Is it practical to attempt to trace foreign sourced subcomponents? While the Customs approach allows an administrative mechanism for tracing U.S. sourced subcomponents, is there a similar mechanism available for tracing foreign sourced subcomponents? UMTA has particular concern in this matter since it is known that various manufacturers purchase components from suppliers who may or may not utilize foreign sourced subcomponents, and these manufacturers may not have any means available to them to ascertain the source of subcomponents.

2. While the UMTA proposals would apply to subcomponents (an item directly incorporated into a component), we are interested in receiving comments as to whether the requirements should extend to below the subcomponent level, and if they should extend beyond this level, how far should they extend.

3. The major purpose of the Buy American requirements is to provide protection for the American labor force and for American manufacturers. If the foreign subcomponent tracing test is adopted, there is some question as to whether or not the true intent of Buy America would be met. The assembly or manufacture of components in the United States is desirable and is currently being done in conjunction with the procurement of transit equipment. UMTA requests comments on the extent to which this would continue if the tracing of foreign subcomponents were required.

4. Specific comments are requested as to any tests or requirements that may be imposed which would realistically trace foreign subcomponents, yet at the same time not impose such an administrative burden on American manufacturers as to discourage them from bidding on federally assisted mass transit projects.

5. While UMTA has set out some of its concerns on the subcomponent matter, any other concerns or issues involving this matter are requested.

Before taking any final action on the subcomponent issue, UMTA will carefully review the comments and suggestions received.

List of Subjects in 49 CFR Parts 660 and 661

Buy America, Domestic preference requirements, Grant programs—transportation, Mass transportation.

PART 660—[AMENDED]

Accordingly, Title 49 of the Code of Federal Regulations is amended by:

1. Amending § 660.11 by adding paragraph (a–1) to read as follows:

§ 660.11 Applicability.

* * * * *

(a–1) The regulations in this part do not apply to any federally-assisted procurement governed by the regulations in Part 661 of this subchapter.

* * * * *

2. Adding a new Part 661 to read as follows:

PART 661—BUY AMERICA REQUIREMENTS—SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

Sec.

§ 661.1 Applicability.
§ 661.3 Definitions.
§ 661.5 General requirements.
§ 661.7 Exceptions.
§ 661.9 Application for exceptions.
§ 661.11 Rolling stock procurement.
§ 661.13 Grantee responsibility.
§ 661.15 Investigation procedures.
§ 661.17 Failure to comply with certification.
§ 661.19 Sanctions.
§ 661.20 Rights of third parties.
§ 661.21 State buy America provisions.

Authority: Sec. 165, Pub. L. 97–424; 49 CFR 1.51.

§ 661.1 Applicability

(a) Except as otherwise provided in this section, these regulations apply to all federally assisted procurements utilizing funds authorized by the Urban Mass Transportation Act of 1964, as amended, the Surface Transportation Assistance Act of 1982, the Surface Transportation Assistance Act of 1978, and Title 23, United States Code which are administered by the Urban Mass Transportation Administration (UMTA) and which are obligated by UMTA after January 6, 1983. These regulations also apply to funds authorized by Section 18 of the Urban Mass Transportation Act of 1964, as amended, that are administered by the Federal Highway Administration, and which are obligated after January 6, 1983.

(b) Under the provisions of Section 165(b)(1) of the Act, these regulations do not apply to the following:

(1) A procurement contract entered into before January 6, 1983, under a Letter of No Prejudice issued by the Urban Mass Transportation Administration.

(2) A procurement contract using funds obligated after January 6, 1983, under a grant amendment which supplements a grant obligated prior to January 6, 1983, where the grant amendment does not change the scope of the original project.

(3) Any procurement using funds obligated after January 6, 1983, to provide planned supplementary funding, subject to the availability of funds, for a multi-year phased project which was initiated prior to January 6, 1983, if the initial procurement contract was awarded prior to January 6, 1983, and if the post-January 6, 1983, grant does not change the scope of the multi-year phased project.

§ 661.3 Definitions.

As used in this part:

(a) "Act" means the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424).

(b) "Administrator" means the Administrator of the Urban Mass Transportation Administration.

(c) "Grantee" means any entity that is a recipient of UMTA funds.

(d) "Manufactured product" means a product produced as a result of manufacturing process.

(e) "Manufacturing process" means a process whereby an original material is changed or transformed into an article which, because of the process, is different from the original product.

(f) "Overall project contract" means the contract between a grantee and its prime contractor.

(g) "United States" means the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Marianas Islands.

§ 661.5 General requirements.

(a) Except as provided in §§ 661.7 and 661.11, no funds may be obligated by UMTA for a grantee project unless all steel, cement, and manufactured products used in the project are produced in the United States.

(b) For steel and cement, all manufacturing processes must take place in the United States, other than metallurgical processes involving refinement of steel additives.

(c) The steel requirements apply to all steel items including, but not limited to, structural steel, running rail, and contact rail.

§ 661.7 Exceptions.

(a) Section 165(b) of the Act provides that the general requirements of Section 165(a) shall not apply in four specific instances. This section sets out the circumstances under which three of the four exceptions apply. Section 661.11 sets out the circumstances under which the "rolling stock" exception applies.

(b) The general requirements of Section 165(a) shall not apply if their application would be inconsistent with the public interest. In determining whether this exception will be granted, the Administrator will consider all appropriate factors on a case by case basis, except for those general exceptions specifically set out in this part.

(c) The general requirements of Section 165(a) shall not apply if materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. In determining whether this exception will be granted, it will be presumed that the conditions exist if no responsive and responsible bid is received offering an item produced in the United States.

(d) The general requirements of Section 165(a) shall not apply if the inclusion of domestic material will increase the cost of the overall project contract by more than 10 percent in the case of projects for the acquisition of rolling stock, and 25 percent in the case of all other projects. The 10 percent provision applies to the acquisition of buses, other rolling stock, and train control equipment, communication equipment, and traction power equipment. In determining whether the exception will be granted, the lowest responsive and responsible bid offering a non-United States produced item will be multiplied by 1.1 or 1.25, as appropriate. If the resulting amount is less than the lowest responsive and responsible bid offering all items produced in the United States, then the exception will be granted.

(e) The statutory exceptions shall be treated as being separate and distinct from each other.

(f) The exceptions described in paragraphs (b) and (c) of this section may be granted if the items described in Section 165(b)(3) of the Act are being procured. If an exception is granted for a component, that component shall be treated as domestic for the purposes of § 661.11.

Appendix A—General Exceptions

(a) All waivers published in 41 CFR 12–6.105 which establish excepted articles, materials, and supplies for the Buy American Act of 1933 (41 U.S.C. 10a–d), as the waivers may be amended from time to time, are incorporated by reference under the provisions of § 661.7 (b) and (c).

§ 661.9 Application for exceptions.

(a) This section sets out the application procedures for obtaining all exceptions except those general exceptions set forth in this Part for which individual applications are unnecessary and those covered by Section 165(b)(3) of the Act. The procedures for obtaining an exception covered by Section 165(b)(3) are set forth in § 661.11.

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

(c) Only a grantee may request an exception. The request must be in writing, include facts and justification to support the exception, and be submitted to the Administrator through the appropriate Regional Administrator.

(d) The Administrator will issue a written determination setting forth the reasons for granting or denying the exception request. Each request for an exception, and UMTA's action on the request, are available for public inspection under the provisions of 49 CFR Part 601, Subpart C.

§ 661.11 Rolling stock procurement.

(a) The provisions of § 661.5 will not apply in the case of the procurement of buses and other rolling stock (including train control, communication, and traction power equipment) if the cost of components which are produced in the United States is more than 50 percent of the cost of all components and final assembly takes place in the United States.

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

(c) An end product means any item subject to Section 165(b)(3) of the Act that is to be acquired by a grantee, as specified in the overall project contract.

(d) In determining the origin of components, each component must be treated as either entirely domestic or entirely foreign, based on the place where the component is mined, produced, or manufactured. Components of unknown origin must be treated as foreign. The origin of subcomponents of components is immaterial. Transportation costs to the place of incorporation into the end product and, in the case of foreign components, applicable duties, must be included in determining component cost.

(e) The cost of a component is the price that a bidder or offeror must pay to a subcontractor or supplier for components for the items covered by Section 165(b)(3). If the component is manufactured by the bidder or offeror, the cost of the component is the cost of labor and materials incorporated into the component, an allowance for profit, and the administrative and overhead costs attributable to that component under normal accounting principles. In accordance with Section 165(c) of the Act, labor costs involved in final assembly shall not be included in calculating component costs.

(f) Final assembly is the effort expended at the final assembly point to manufacture the end-product.

(g) The final assembly requirement will be presumed to have been met if the cost of final assembly is at least 10 percent of the overall project contract cost.

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

(1) Mimic board in central control.
(2) Dispatchers console.
(3) Local control panels.
(4) Station (way side) block control relay cabinets.
(5) Terminal dispatcher machines.
(6) Cable/cable trays.
(7) Switch machines.
(8) Way side signals.
(9) Impedance bonds.
(10) Relay rack bungalows.
(11) Central computer control.

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

(1) Radios.
(2) Space station transmitter and receivers.
(3) Vehicular and hand-held radios.
(4) PABX telephone switching equipment.
(5) PABX telephone instruments.
(6) Public address amplifiers.
(7) Public address speakers.
(8) Cable transmission system cable.
(9) Cable transmission system multiplex equipment.
(10) Communication console at central control.
(11) Uninterruptible power supply inverters/rectifiers.
(12) Uninterruptible power supply batteries.
(13) Data transmission system central processors.
(14) Data transmission system remote terminals.
(15) Line printers for data transmission system.
(16) Communication system monitor test panel.
(17) Security console at central control.

(j) Traction power equipment includes, but is not limited to, the following:

(1) Primary AC switch gear.
(2) Primary AC transformers (rectifier).
(3) DC switch gear.
(4) Traction power console and CRT display system at central control.
(5) Bus ducts with buses (AC and DC).
(6) Batteries.
(7) Traction power rectifier assemblies.
(8) Distribution panels (AC and DC).
(9) Facility step-down transformers.
(10) Motor control centers (facility use only).
(11) Battery chargers.
(12) Supervisory control panel.
(13) Annunciator panels.
(14) Low voltage facility distribution switch board.
(15) DC connect switches.
(16) Negative bus boxes.
(17) Power rail insulators.
(18) Power cables (AC and DC).
(19) Cable trays.
(20) Instrumentation for traction power equipment.
(21) Connectors, tensioners, and insulators for overhead power wire systems.
(22) Negative drainage boards.
(23) Inverters.

(k) The power or third rail is not considered traction power equipment and is thus subject to the requirements of Section 165(a) of the Act and the requirements of § 661.5.

(l) A bidder who is bidding on a contract for any of the items covered by Section 165(b)(3) and who will comply with Section 165(b)(3) and the regulations in this section is not required to follow the application for exceptions procedures set out in § 661.9 for the items covered by Section 165(b)(3). In lieu of these procedures, the bidder must specifically certify in the certificate required by Section 661.13(b) of this part that it will comply with Section 165(b)(3) and § 661.11 of this part.

Appendix A—General Exceptions

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

§ 661.13 Grantee responsibility.

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

(b) The grantee shall include in its bid specification for procurement within the scope of these regulations 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 a completed Buy America certificate indicating that the bidder or offeror will comply with the requirements of Section 165(a) and the regulations set forth in this part.

§ 661.15 Investigation procedures.

(a) It is presumed that a bidder who has submitted the required Buy America certificate is complying with the Buy America provision. A false certification is a criminal act in violation of 18 U.S.C. 1001.

(b) Any party may petition UMTA to investigate the compliance of a successful bidder with the bidder's certification. That party ("the petitioner") must include in the petition a statement of the grounds of the petition and any supporting documentation. If UMTA determines that the information presented in the petition indicates that the presumption in paragraph (a) of this section has been overcome, UMTA will initiate an investigation.

(c) When UMTA initiates an investigation, it will request that the grantee require the successful bidder to document its compliance with its Buy America certificate. The successful bidder has the burden of proof to establish that it is in compliance. Documentation of compliance will be based on the specific circumstances of each investigation, and UMTA will specify the documentation required in each case.

(d) The grantee shall be required to reply to the request under paragraph (c)

of this section within 15 working days of the request.

(e) Any additional information requested or required by UMTA must be submitted within 5 working days after the receipt of such request unless specifically excepted by UMTA.

(f) The grantee's reply (or that of the bidder) will be transmitted to the petitioner. The petitioner may submit comments on the reply to UMTA within 10 working days after receipt of the reply. The grantee and the low bidder will be furnished with a copy of the petitioner's comments, and they may submit rebuttal comments to UMTA within 5 working days after receipt of the petitioner's comments.

(g) The failure of a party to comply with the time limits stated in this section may result in resolution of the investigation without consideration of untimely filed comments.

(h) UMTA shall, upon request, make available to any interested party information bearing on the substance of the investigation which has been submitted by the petitioner, interested parties or grantees, except to the extent that withholding of information is permitted or required by law or regulation. If a party submitting information considers that the information submitted contains proprietary material which should be withheld, a statement advising UMTA of this fact may be included, and the alleged proprietary information must be identified wherever it appears. Any comments on the information provided shall be submitted within a maximum of ten days.

(i) When a petition for investigation has been filed before award, the grantee will not make an award prior to the resolution of the investigation and when a request for investigation has been filed before the opening of bids, the grantee will not open bids prior to the resolution of the investigation, unless the grantee determines that:

(1) The items to be procured are urgently required;

(2) Delivery or performance will be unduly delayed by failure to make the award promptly; or

(3) Failure to make prompt award will otherwise cause undue harm to the grantee or the Federal Government.

(j) In the event that the grantee determines that the award is to be made during the pendency of an investigation, the grantee will notify UMTA prior to making such award. UMTA reserves the right not to participate in the funding of any contract awarded during the pendency of an investigation.

(k) Initial decisions by UMTA will be in written form. Reconsideration of an initial decision of UMTA may be requested by any party involved in an investigation. UMTA will only reconsider a decision if the party requesting reconsideration submits new matters of fact or points of law that were not known or available to the party during the investigation. Request for reconsideration of a decision of UMTA shall be filed not later than ten (10) days after the initial written decision. A request for reconsideration shall be subject to the procedures, in this section, consistent with the need for prompt resolution of the matter.

§ 661.17 Failure to comply with certification.

If a successful bidder fails to demonstrate that it is in compliance with its certification, it will be required to take the necessary steps in order to achieve compliance. If a bidder takes these necessary steps, it will not be allowed to change its original bid price. If a bidder does not take the necessary steps, it will not be awarded the contract if the contract has not yet been awarded, and it is in breach of contract if a contract has been awarded.

§ 661.19 Sanctions.

A willful refusal to comply with certification by a successful bidder may lead to the initiation of debarment proceedings under 49 CFR Part 29 (proposed December 13, 1982 (47 FR 55700)).

§ 661.20 Rights of third parties.

The sole right of any third party under the Buy America provision is to petition UMTA under the provisions of § 661.15. No third party has any additional right, at law or equity, for any remedy including, but not limited to, injunctions, damages, or cancellation of the Federal grant or contracts of the grantee.

§ 661.21 State buy America provisions.

(a) Except as provided in paragraph (b) of this section, any State may impose more stringent buy America or buy national requirements than contained in Section 165 of the Act and the regulations in this part.

(b) UMTA will not participate in contracts governed by the following:

(1) State buy America or buy national preference provisions which are not as strict as the Federal requirements.

(2) State and local buy national or buy America preference provisions which are not explicitly set out under State law. For example, administrative interpretations of non-specific State legislation will not control.

(3) State and local buy local preference provisions.

(Sec. 165, Pub. L. 97-424; 49 CFR 1.51)

Dated: September 8, 1983.

G. Kent Woodman,

Acting Deputy Administrator.

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