



US Department
of Transportation
**Federal Transit
Administration**

Headquarters

400 Seventh St., S.W.
Washington, D.C. 20590

JUL 23 2001

Mr. Daniel J. Hughes, Esq.
Alcan Aluminum Corporation
P.O. Box 6977
Cleveland, OH 44101-1977

Dear Mr. Hughes:

This letter responds to the request of your client, Alusuisse Singen GmbH, for a non-availability component waiver of the Buy America requirements for its co-extruded, aluminum-steel composite rail. You advise that Alusuisse's composite rail is, among other things, a distinctly superior product from traditional steel rail in terms of durability, conductivity, and weight, and by virtue of its distinct features, is a different product from traditional third rail, and therefore, not available in the U.S. For reasons discussed below, FTA will not grant this waiver request.

The Federal Transit Administration's (FTA) general requirements concerning domestic preference for the procurement of steel, iron, and manufactured products are set forth in 49 U.S.C. §5323(j). Under 49 U.S.C. § 5323(j)(2)(B), those requirements shall not apply if the item or items being procured are not produced in the United States in sufficient and reasonably available quantities or are not of a satisfactory quality. This statutory exception for non-availability is reflected in the implementing regulation at 49 C.F.R. 661(c). The implementing regulation also provides that a waiver may be requested "for a specific item or material that is used in the production of a manufactured product." 49 C.F.R. 661.7(g). The regulations allow a bidder or supplier to request a waiver only if it is being sought under this section. See 49 C.F.R. 661.7(g) and 661.9(d).

Based on the information that you have provided and on input from transit agencies currently testing Alusuisse's composite rail, I am unable to grant this waiver request. While several of the design specifications and manufacturing processes are arguably unique to Alusuisse, the nature of the co-extruded, aluminum-steel composite rail has not proven to be a superior product, or one technically distinct in function from third-rail manufactured in the U.S. Field-testing in the U.S. reported to FTA has indicated that Alusuisse rail is less durable than aluminum clad conductor rail. Further, your position that this rail is more resistant than domestically produced rail has not been supported by FTA grantees asked to verify that assertion. It has also been reported to FTA that the Alusuisse product performed poorly in test segments and doubt exists concerning the claims of lower resistance and fewer required power distribution stations. Our review of the facts indicates that third rail of sufficient quantity and satisfactory quality is manufactured in the United States. Therefore, I conclude that the circumstances necessary to support a non-availability waiver do not exist.¹

If you have any questions, please contact Meghan G. Ludtke at (202) 366-4011.

Very truly yours,

Gregory B. McBride
Deputy Chief Counsel

¹ This determination is based on the merits of the petition, however, it should also be noted that 49 CFR 661.7(g) only allows requests for components of manufactured products, as described in 49 CFR 661.5(d), not for the steel or iron used in products as described in 661.5(b) and (c).