



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

JUL 17 2014

Shirley Cornett  
Superintendent  
The Apache Railroad Company, LLC  
P.O. Box 857  
Snowflake, Arizona 85937

Re: Request for Waiver of the Buy America Policy Applied to the Railroad Rehabilitation and Improvement Financing Loan Program

Dear Ms. Cornett:

This letter is in response to your request dated April 29, 2014, that the Federal Railroad Administration (FRA) grant the Apache Railroad Company, LLC (Apache LLC), a waiver from the Buy America policy applicable to FRA's Railroad Rehabilitation and Improvement Financing loan program (RRIF) in connection with Apache LLC's purchase of existing railroad assets from The Apache Railway Company, Inc. (ARC). FRA is granting Apache LLC's Buy America Waiver request under the public interest exception.

Apache LLC is seeking a \$5 million loan under RRIF to finance the purchase of railroad assets from ARC. Several of the assets were not manufactured in the U.S.

FRA's RRIF Buy America policy is that the steel, iron, and manufactured goods used in projects funded by RRIF must be produced in the United States. This policy includes the purchase of new or existing goods, or the refinance of assets, including rolling stock and railroad infrastructure. Further, FRA's RRIF Buy America policy for rolling stock, including locomotives, requires domestic final assembly and that all of the components be manufactured in the U.S. FRA may waive the Buy America policy if FRA finds that:

1. The steel, iron, and goods produced in the U.S. are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;
2. Rolling stock or power train equipment cannot be bought and delivered in the U.S. within a reasonable time;
3. Including domestic material will increase the cost of the overall project by more than 25 percent; and/or
4. Applying the RRIF Buy America policy would be inconsistent with the public interest.

In Apache LLC's case, FRA believes a waiver is appropriate under the public interest exception (4. above) for the following reasons:

- Preserving rail to small communities or rural areas is an important objective of the FRA, and Apache LLC is headquartered in the U.S., a Class III, short line railroad, and located in a rural area of Arizona. The current financing is temporary, and the current beneficiary of ARC's deed of trust will likely scrap the rail assets unless its loan is paid off through RRIF or other funding.
- ARC / Apache LLC employees 9 full-time employees. FRA finds that ongoing operations will allow the community to retain jobs and attract new jobs with a significant economic impact in the region.
- The proposed project does not contemplate, nor has Apache LLC indicated to FRA that Apache LLC ever contemplated, the purchase of any new assets, including locomotives or rolling stock. Further, FRA finds that selling three locomotives and purchasing three new locomotives would add at least a \$1,000,000 dollars to the project.
- The assets were manufactured and purchased by the original purchaser well before RRIF applied a Buy America requirement to its loan applications and before Apache LLC had any intent to obtain RRIF financing. The newest equipment was manufactured in 2001. The 3 Canadian-assembled locomotives were manufactured in 1965 and purchased by ARC in 1998.
- FRA finds that the number of non-domestic assets in the project is limited. For example, only three of Apache LLC's ten locomotives were manufactured outside of the U.S. Apache LLC believes, based on Apache LLC's records and a physical inspection, that the locomotives do not have foreign components. They have also been rebuilt using U.S. components. Apache LLC asserts that the steel rail is U.S. made. The other assets and machinery were made in the U.S. other than a loader and a truck.

Pursuant to FRA's RRIF Buy America policy, FRA will publish this letter granting Apache LLC's request on FRA's website<sup>1</sup> and provide an opportunity for public comment after which this waiver will become effective. Please note, however, FRA's decision to grant this waiver for the project will have no impact on any future FRA decision on Apache LLC's application for a RRIF loan. Apache LLC's application for RRIF financing for this project will be evaluated under the governing statutes, regulations and policies of the RRIF loan program.

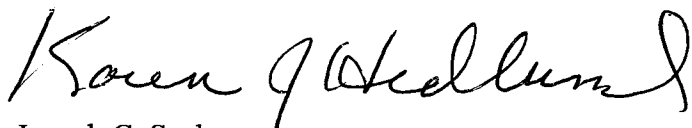
Questions about this letter can be directed to John Johnson, Attorney-Advisor, at

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<sup>1</sup> At <http://www.fra.dot.gov/Page/P0694> please follow link titled "Waiver Request Granted for Comment."

[john.johnson@dot.gov](mailto:john.johnson@dot.gov) or (202) 493-0078. We look forward to continuing to work with you on Apache LLC's loan application.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph C. Szabo". The signature is written in a cursive style with a large, stylized initial "J".

Joseph C. Szabo  
Administrator