

Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Ozone, Particulate matter.

Dated: June 15, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

■ 2. Section 52.2220(c) Table 3 is amended by revising the entry for Section 25.0 to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 3—EPA APPROVED KNOX COUNTY, REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *				
Section 25.0	Permits	January 16, 2008	June 25, 2009 [Insert citation of publication].	
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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA-2008-0057]

RIN 2132-AA99

Buy America Requirements; Bi-Metallic Composite Conducting Rail

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: Following the two recent Buy America rulemakings pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the Federal Transit Administration (FTA) received a petition for reconsideration of the treatment of bi-metallic composite

conducting rail as a steel product that must be manufactured in the United States.

Because FTA believed adopting the petitions through a Final Rule would have altered the regulatory environment without notice-and-comment from all affected parties who may have been unaware of the petition, FTA declined to accept the petition and instead issued a Notice of Proposed Rulemaking.

Through this Final Rule, FTA is amending its Buy America regulation to include bi-metallic composite conducting rail on the list of traction power equipment. As such, bi-metallic rail need only consist of 60 percent domestic content, with final assembly taking place in the United States.

In addition, FTA is amending Appendix A of section 661.7 to restore the public interest waivers for small purchases which was inadvertently deleted and to update a cross reference to the list of products exempted under the Buy American Act of 1933, and amending statutory references in the compliance certifications in section 661.12

DATES: *Effective Date:* July 27, 2009.

FOR FURTHER INFORMATION CONTACT: Richard L. Wong, Office of the Chief Counsel, Federal Transit Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366-4011 or Richard.Wong@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 24, 2008, FTA published a Notice of Proposed Rulemaking (NPRM) (73 FR 70950) seeking public comment whether bi-metallic rail used as part of a power traction system should continue to be treated as a steel or iron product under section 661.3, a manufactured product under section 661.5, or traction power equipment under section 661.11(v). This was the outgrowth of a previous Buy America rulemaking (70 FR 71246) in which the Federal Transit Administration (FTA) discussed several proposals mandated by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub L. 109-59),

proposing to make conforming amendments to its Buy America regulation (49 CFR part 661).

During the earlier open comment period, several commenter recommended that aluminum composite conducting rail, otherwise known as Bimetallic Power Transmission (BPTS) equipment, which is a combination of an aluminum conductor and a stainless steel abrasion-resistant cap, be added to the list of traction power equipment in 49 CFR 661.11(v) because of its power-delivery function as part of the traction power system. However, FTA's current regulation at 49 CFR 661.11(w) stated that "[t]he power or third rail is not considered traction power equipment and is thus subject to the requirements of 49 U.S.C. 5323(j) and the requirements of 49 CFR 661.5." In other words, any rail used to provide power must be produced in the United States, which includes all manufacturing processes except for metallurgical processes involving refinement of steel additives.

According to commenters who supported the proposal, BPTS is a "new power transmission product developed to address the needs of modern traction power systems" that offers a higher conductivity (2.5 times greater) combined with a lighter weight (three times lighter) when compared with steel. They stated that BPTS is part of an "integrated electrical transmission system or an integrated equipment configuration rather than a third rail" and that FTA needed to update its regulations to reflect changes in new technology.

The November 2005 NPRM only asked whether enumerated items on an FTA-developed list should be added to the list of traction power equipment in section 661.11(v). The petitioners' recommendation, if adopted, not only would have amended section 661.11(v) to include an item not proposed in the initial NPRM but also would have required a modification to the regulatory classification of rail in section 661.5 of the existing rule. Adopting these changes which were not proposed in the NPRM would not have provided other parties, specifically, firms manufacturing other types of power-conducting rail, to comment on the treatment of BPTS. Therefore, in the interest of fairness, FTA declined to make such a change in the 2007 Final Rule and instead published the subsequent NPRM (73 FR 70950, Nov. 24, 2008).

II. Comments Received

FTA received three comments in response to the NPRM. One commenter,

a vendor of power rail equipment, asked whether a supplier of bi-metallic rail had sought the change and asked FTA to divulge the identity of the requestor. FTA believes that the identity of a requestor was not germane to the proposed rule, which should be evaluated on its merits and not on the identity of any petitioner. Moreover, the identity of possible petitioners could have been readily ascertained by reviewing the docket comments submitted during the two previous Buy America rulemakings.

Another commenter noted that the list of manufactured products in the proposed Appendix A to section 661.3 did not accurately reflect the current treatment of "systems" as redefined in FTA's September 2007 Final Rule. The text of the revised Appendix A has been revised accordingly.

A public transportation trade association, writing on behalf of its 1,500 member organizations, commended FTA on its commitment to follow through on the comments filed during the previous rulemaking and raising the issue in a forum for proper consideration by the industry and public like. The association reiterated its support for the amendment as expressed in its earlier public comments to the docket, noting that virtually every product on the list of traction power equipment is a manufactured product and that FTA needed to differentiate between conventional steel conducting rail and bi-metallic conducting rail.

In light of the lack of any objections to the NPRM, and the strong and consistent support of the member-based trade association, FTA is amending its regulation as proposed in the NPRM.

After publication of the September 2007 Final Rule, FTA was informed of the need to make two technical corrections to Appendix A to § 661.7. First, the cross-reference in paragraph (a) to the list of items exempted under the Federal Buy American Act of 1933 needed to be updated to reflect the current regulatory citation. Accordingly, the citation is being changed from 48 CFR 25.108 to 48 CFR 25.104. Second, the standing public interest waiver for small purchases (60 FR 37930, July 24, 1995) was inadvertently deleted during the earlier rulemakings. While it was clear from the statute that Congress intended for FTA to rescind its public interest waiver for 15-passenger vans, there is nothing in the record that indicates any intent to rescind the small purchase exemption. Therefore, FTA is restoring the small purchase exemption as paragraph (c).

Regulatory Analyses and Notices

A. Statutory/Legal Authority

Executive Order 12866 and DOT Regulatory Policies and Procedures

This NPRM is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This NPRM is also nonsignificant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, Feb. 26, 1979). This NPRM imposes no new compliance costs on the regulated industry.

B. Executive Order 13132

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This NPRM does not include any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this NPRM does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and proposals to assess their impact on small businesses and other small entities to determine whether the rule or proposal will have a significant economic impact on a substantial number of small entities. This NPRM imposes no new costs. Therefore, FTA certifies that this proposal does not require further analysis under the Regulatory Flexibility Act. FTA requests public comment on whether the proposals contained in this NPRM have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act of 1995

This NPRM does not propose unfunded mandates under the Unfunded Mandates Reform Act of

1995. If the proposals are adopted into a final rule, it will not result in costs of \$100 million or more (adjusted annually for inflation), in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

F. Paperwork Reduction Act

This NPRM proposes no new information collection requirements.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this NPRM.

I. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://DocketsInfo.dot.gov>.

List of Subjects in 49 CFR Part 661

Grant programs—transportation, Public transportation, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, 49 CFR part 661 of the Code of Federal Regulations is amended as follows:

PART 661—BUY AMERICA

■ 1. The authority citation for part 661 continues to read as follows:

Authority: 49 U.S.C. 5323(j) (formerly sec. 165, Pub. L. 97–424; as amended by sec. 337, Pub. L. 100–17; sec. 1048, Pub. L. 102–240; sec. 3020(b), Pub. L. 105–178; and sec. 3023(i) and (k), Pub. L. 109–59); 49 CFR 1.51.

■ 2. In § 661.3, revise Appendix A to § 661.3 to read as follows:

§ 661.3 Definitions.

* * * * *

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).

(2) *Steel and iron end products:* Items made primarily of steel or iron such as structures, bridges, and track work, including running rail, contact rail, and turnouts.

(3) *Manufactured end products:* Infrastructure projects not made primarily of steel or iron, including structures (terminals, depots, garages, and bus shelters), ties and ballast; contact rail not made primarily of steel or iron; fare collection systems; computers; information systems; security systems; data processing systems; and mobile lifts, hoists, and elevators.

■ 3. In § 661.5, revise paragraph (c) to read as follows:

§ 661.5 General requirements.

* * * * *

(c) The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other

manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.

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■ 4. In § 661.7, revise Appendix A to § 661.7 to read as follows:

§ 661.7 Waivers.

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Appendix A to § 661.7—General Waivers

(a) All waivers published in 48 CFR 25.104 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, apply to this part under the provisions of § 661.7 (b) and (c).

(b) Under the provisions of § 661.7 (b) and (c) of this part, a general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

(c) Under the provisions of § 661.7(b) of this part, a general public interest waiver from the Buy America requirements for “small purchases” (as defined in the “common grant rule,” at 49 CFR 18.36(d)) made by FTA grantees with capital, planning, or operating assistance.

■ 5. Amend § 661.11 by adding paragraph (v)(31) to read as follows:

§ 661.11 Rolling stock procurements.

(v) * * *

(31) Bimetallic power rail.

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■ 6. Amend § 661.12 by removing the phrase “section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended” and add in its place the phrase “49 U.S.C. 5323(j)(2)(C)”.

Issued in Washington, DC, this 18th day of June, 2009.

Matthew Welbes,

Executive Director.

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