

requirements were tailored to the types of products that are typically used in highway construction, which generally meet the requirement that steel and iron materials be manufactured domestically. In today's global industry, vehicles are assembled with iron and steel components that are manufactured all over the world. The FHWA is not aware of any domestically produced vehicle on the market that meets FHWA's Buy America requirement to have all its iron and steel be manufactured exclusively in the United States. For example, the Chevrolet Volt, which was identified by many commenters in a November 21, 2011, **Federal Register** Notice (76 FR 72027) as a car that is made in the United States, is comprised of only 45 percent of United States and Canadian content according to the National Highway Traffic Safety Administration's Part 583 American Automobile Labeling Act Report Web page at [http://www.nhtsa.gov/Laws+&+Regulations/Part+583+American+Automobile+Labeling+Act+\(AALA\)+Reports](http://www.nhtsa.gov/Laws+&+Regulations/Part+583+American+Automobile+Labeling+Act+(AALA)+Reports). Moreover, there is no indication of how much of this 45 percent content is domestically manufactured (from initial melting and mixing) iron and steel content.

Consistent with the Consolidated Appropriations Act of 2017 (Pub. L. 115–31), FHWA published two notices seeking comments whether a waiver is appropriate on its Web site, <https://www.fhwa.dot.gov/construction/contracts/cmaq170321.cfm> and <https://www.fhwa.dot.gov/construction/contracts/cmaq170725.cfm>. The FHWA received no comments in response to the publication. Based on FHWA's conclusion that there are no domestic manufacturers that can produce the vehicles identified in this notice in such a way that all their steel and iron materials are manufactured domestically, FHWA finds that a waiver of FHWA's Buy America requirements is appropriate under the non-availability criteria (23 U.S.C. 313(b)(2) and 23 CFR 635.410(c)(2)(ii)). However, FHWA believes that it is consistent with the Buy America requirements to impose the condition that the vehicles and the vehicle components be assembled in the United States. Requiring final assembly to be performed in the United States is consistent with past guidance to FHWA Division Offices on manufactured products (see Memorandum on Buy America Policy Response, Dec. 22, 1997, <http://www.fhwa.dot.gov/programadmin/contracts/122297.cfm>). A waiver of the Buy America requirement without any regard to where the vehicle is assembled would

diminish the purpose of the Buy America requirement. Moreover, in today's economic environment, the Buy America requirement is especially significant in that it will ensure that Federal-aid funds are used to support and create domestic jobs. This approach is similar to the conditional waivers previously given for various vehicle projects. Thus, so long as the final assembly of the 29 vehicles occurs in the United States, applicants to this waiver request may proceed to purchase these vehicles consistent with the Buy America requirement.

In accordance with the provisions of section 117 of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Technical Corrections Act of 2008" (Pub. L. 110–244), FHWA is providing this notice of its finding that a non-availability waiver of Buy America requirements is appropriate on the condition that the vehicles identified in the notice are assembled domestically. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410

Issued on: October 2, 2017.

Brandye L. Hendrickson,
Acting Administrator, Federal Highway Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0085]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated August 22, 2017, Siemens Mobility Division Rolling Stock (Siemens) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from the requirements of 49 CFR 238.103 (Fire safety). FRA assigned the petition docket number FRA–2017–0085.

Section 238.103 of Title 49 of the CFR requires materials used in the construction of passenger cars to meet the test methods and performance criteria for the flammability and smoke emission characteristics of Appendix B to part 238. Appendix B requires all thermal and acoustic insulation material

used in the construction of passenger rail vehicles to be tested in accordance with American Society for Testing and Materials (ASTM) E 162.98 with a radiant panel index of $I_s \leq 25$, and ASTM E 662–01 with a specific optical density $D_s (4.0) \leq 100$.

In constructing twenty passenger coaches for use in phase 1 of the Brightline/All Aboard Florida (AAF) passenger service between Miami and West Palm Beach, Siemens used a "K-Flex Eco" material that has been tested with the results of $I_s = 202$ and $D_s (4.0) = 131$. Siemens is requesting a waiver from Appendix B as applied to these two requirements, asserting that the "fire risk . . . is negligible and an equivalent level of safety is maintained" considering the end use configuration of the material and the small amount of the material used" Siemens further indicates it intends the waiver to provide sufficient information to demonstrate an equivalent level of safety in order to prevent the replacement of the K-Flex Eco insulation material in the 20 coaches. Siemens also notes that granting the requested relief would have a considerable positive impact on the project schedule and associated costs.

In support of its petition, Siemens attached two documents: (1) AAF Coach SFT Water Pipe Insulation Discussion V5 (A 13-page presentation showing pipe insulation material, its usage on AAF coaches, for drain and fresh water pipes, as well as locations of the usage); and (2) a 53-page document titled, "Fire Safety Analysis; Use of K-Flex Eco Insulation in All Aboard Florida Coaches." (SII–ENA–215 Rev. B). This document provided the analysis supporting Siemens' safety equivalency claim.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the

comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 6, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of [regulations.gov](http://www.regulations.gov).

Robert C. Lauby,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2017-0084]

Petition for Waiver of Compliance

Under part 211 of title 49 of the Code of Federal Regulations (CFR), this provides the public notice that on August 21, 2017, the Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety

regulations in 49 CFR part 214. FRA assigned the petition docket number FRA-2017-0084.

NS requests a waiver of compliance from § 214.336(c) as it pertains to procedures for adjacent controlled track movements at 25 miles per hour (mph) or less. NS indicates this request is specific to a unique working group, the R-3 Dual Rail Gang (R-3 Gang). This group is a system-level production gang comprised of 78 employees and 40 roadway maintenance machines with the capability to remove both rails while simultaneously installing both new rails. NS states no other railroad has a work group that operates in this manner to replace both rails; the relief requested in the waiver would apply only to this specific work group.

NS is seeking a waiver from using the gauge position of the rail as the point for the plane that is not to be broken on the occupied track. Instead, NS seeks to use the removed rails of the occupied track as an envelope for on-ground work performed exclusively between these rails for the employees working in the R-3 Gang. NS asserts the work can be performed safely within the context of the R-3 Gang's work. As described by NS in its petition, during dual rail replacement, both rails are simultaneously removed from the track structure and positioned on the ballast against the outside of the crossties on the occupied track. In this position, the removed rail is nearly 16.75 inches closer to the adjacent controlled track than its normal gage position on the crosstie. Once the rails are removed from their normal position on the crosstie, an adzing machine is used to remove any tie cutting from the crosstie. At this point in the process, there is not a clearly defined outside limit with respect to "the on-ground work performed exclusively between the rails." NS states that the removed rail lying on the ballast against the end of the crosstie provides a clear line of demarcation that is easily identifiable to its employees.

NS is also seeking a waiver from the requirement that on-ground work be performed exclusively between the rails (*i.e.*, not breaking the plane of the rails) of the occupied track. Based on this request, NS seeks a waiver from compliance to allow up to four on-ground R-3 Gang employees (when working with one adjacent controlled track) and up to eight on-ground R-3 Gang employees (when working with two adjacent controlled tracks) to break the plane of the outside rail to perform minor work. NS indicates the employees would be limited in their duties for breaking the plane of the outside rail to

only move tie plates with non-powered hand tools from the ballast to its position on top of the crossties. This minor work could be completed with the employees' center of gravity positioned within the newly defined outside rails.

A copy of the petition, as well as any other written communications concerning the petition, is available for review online at www.regulations.gov and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 20, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>.