

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Maps are available for inspection at 109 East Main Street, Weyauwega, WI 54983.

#### Unincorporated Areas of Waupaca County

Maps are available for inspection at 811 Harding Street, Waupaca, WI 54981.

#### Village of Big Falls

Maps are available for inspection at 220 Main Street, Big Falls, WI 54926.

#### Village of Fremont

Maps are available for inspection at 317 Wolf River Drive, Fremont, WI 54940.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: November 14, 2008.

**Michael K. Buckley,**

*Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.*

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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:** Notice of proposed rulemaking (NPRM).

**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.

At present, FTA's Buy America regulation treats both running rail and contact rail as a steel or iron product which must be manufactured entirely in the United States. During the recent rulemakings, several commenters proposed that bi-metallic rail be instead categorized as "traction power equipment." If adopted, the proposal would have changed the regulatory treatment of contact rail based on the rail's composition. As traction power equipment, bi-metallic rail would have been subject to a lower 60 percent

domestic content requirement, in contrast to running rail made of steel and iron, which must contain 100 percent domestic content. In addition, as traction power equipment, bi-metallic rail would be subject only to "final assembly" in the United States, which may be a less rigorous process than the manufacturing process required for other forms of power rail, including steel and iron.

Because FTA believed adopting the proposal in the Final Rule would have altered the regulatory environment for affected parties who may have been unaware of the proposal, including manufacturers of steel and iron contact rail, without subjecting the issue to full notice-and-comment from all affected parties, FTA declined to adopt the proposal, instead deferring action to this separate rulemaking.

Through this Notice of Proposed Rulemaking (NRPM), FTA proposes to amend its Buy America regulations to re-categorize bi-metallic composite conducting rail as "traction power equipment" which need only consist of 60 percent domestic content, with final assembly taking place in the United States.

**DATES:** Comments must be submitted on or before January 23, 2009. Late filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FTA-2008-0057] by any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

See **SUPPLEMENTARY INFORMATION** section for more information on submitting comments.

**FOR FURTHER INFORMATION CONTACT:**

Richard 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](mailto:Richard.Wong@dot.gov).

**SUPPLEMENTARY INFORMATION:**

*Instructions for submitting comments:*

You must include the agency name (Federal Transit Administration) and Docket number (FTA-2008-0057) or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to <http://www.regulations.gov> including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://DocketsInfo.dot.gov>.

### I. Background

On November 28, 2005, the Federal Transit Administration (FTA) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (70 FR 71246) that discussed several proposals mandated by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, August 10, 2005), and proposed to provide further clarification of existing FTA decisions on Buy America.

During the open comment period, several commenters 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) states 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 supporting 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.

In its September 20, 2007 Final Rule (72 FR 53688), FTA stated that it believed that the commenters' recommendations went beyond the scope of the rulemaking. The NPRM narrowly asked whether specific items should be added to the list of traction power equipment in section 661.11(v). The commenters' 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 is publishing this NPRM seeking public comment whether BPTS should continue to be covered as a manufactured product under section 661.5 or whether it should now be treated as traction power equipment under section 661.11(v).

Currently, all power or third rails, regardless of whether made primarily from aluminum, steel, iron, or some other material, are excluded from the definition of "traction power

equipment" and instead are subject to 49 CFR 661.5 as a steel or iron product. If the rail is made of any percentage of steel or iron, the product must comply with 49 CFR 661.5(c); thus, it must be *manufactured* in the United States. Under this NPRM, FTA is proposing to adopt the petitioner's proposal that BPTS be treated as traction power equipment which need only consist of 60 percent domestic content, with *final assembly* taking place in the United States.

FTA seeks comments regarding this proposal—should BPTS be held to a lighter "final assembly" standard rather than the "manufacturing" standard? Should FTA maintain domestic origin requirements for both the steel and aluminum components of BPTS? How would the treatment of BPTS as traction power equipment affect domestic manufacturers of steel or iron conducting rail? Should all conducting rail be categorized as traction power equipment, without regard to composition? FTA asks that commenters offer any pertinent data or information in support of their views as to whether it is appropriate that BPTS be treated as traction power equipment rather than a manufactured rail product.

## 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 proposed to be amended as follows:

PART 661—BUY AMERICA REQUIREMENTS

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. 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 equipment; computers; information, security, and data processing equipment; mobile lifts, hoists, and elevators.

3. Revise § 661.5, 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.

\* \* \* \* \*

4. 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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Issued in Washington, DC this 14th day of November 2008.

James S. Simpson, Administrator.

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