

on September 29, 2017, and in other documents in the project records. The FEIS and ROD and other project records are available by contacting FHWA and UDOT at the addresses provided above. The FEIS and ROD can be viewed and downloaded from the project Web site at <http://www.udot.utah.gov/westdavis/>, or obtained from any contact listed above.

This notice applies to all Federal agency decisions that are final as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General*: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air*: Clean Air Act [42 U.S.C. 7401–7671q].

3. *Land*: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303; 23 U.S.C. 138].

4. *Wildlife*: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Marine Mammal Protection Act [16 U.S.C. 1361–1423h]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667d]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470f]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470aa–470mm]; Archeological and Historic Preservation Act [16 U.S.C. 469–469c]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources*: Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].

8. *Hazardous Materials*: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

9. *Executive Orders*: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O.

13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority**: 23 U.S.C. 139(l)(1).

Issued on: October 2, 2017.

**Ivan Marrero**,

*Division Administrator, Federal Highway Administration, Salt Lake City, Utah.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Buy America Waiver Notification

**AGENCY**: Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION**: Notice.

**SUMMARY**: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the obligation of Federal-aid funds for 4 California projects involving the acquisition of vehicles under the Congestion Mitigation and Air Quality Improvement program on the condition that they be assembled in the U.S., on the basis that there are no domestic manufacturers that produce the vehicles identified in this notice in such a way that all their steel and iron elements are manufactured domestically.

**DATES**: The effective date of the waiver is October 10, 2017.

**FOR FURTHER INFORMATION CONTACT**: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, 202–366–1562, or via email at [Gerald.Yakowenko@dot.gov](mailto:Gerald.Yakowenko@dot.gov). For legal questions, please contact Mr. Jomar Maldonado, FHWA Office of the Chief Counsel, 202–366–1373, or via email at [Jomar.Maldonado@dot.gov](mailto:Jomar.Maldonado@dot.gov). Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION**:

#### Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register's** home page at <http://>

[www.archives.gov](http://www.archives.gov) and the Government Publishing Office's database.

#### Background

This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the obligation of Federal-aid funds for 4 California projects involving the acquisition of vehicles under the Congestion Mitigation and Air Quality Improvement (CMAQ) program. The waiver would apply to approximately 29 vehicle acquisitions on the condition that they be assembled in the United States. These involve 17 compressed natural gas solid waste trucks for the City of Visalia (CMLNI–5044(117)), 1 propane powered school bus for the City of Visalia (CMLNI–5044(119)), 6 diesel refuse trucks for the City of Tulare (CMLNI–5072(061)), and 5 compressed natural gas refuse trucks for the City of Porterville (CMLNI–5122(086)).

Title 23, Code of Federal Regulations (CFR), section 635.410 requires that steel or iron materials (including protective coatings) that will be permanently incorporated in a Federal-aid project must be domestically manufactured. For FHWA, this means that all the processes that modified the chemical content, physical shape or size, or final finish of the material (from initial melting and mixing, continuing through the bending and coating) occurred in the United States. The statute and regulations create a process for granting waivers from the Buy America requirements when its application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. In 1983, FHWA determined that it was both in the public interest and consistent with the legislative intent to waive Buy America for manufactured products other than steel manufactured products. However, FHWA's national waiver for manufactured products does not apply to the requests in this notice because they involve predominately steel and iron manufactured products. The FHWA's Buy America requirements do not have special provisions for applying Buy America to "rolling stock" such as vehicles or vehicle components (see 49 U.S.C. 5323(j)(2)(C), 49 CFR 661.11, and 49 U.S.C. 24405(a)(2)(C) for examples of Buy America rolling stock provisions for other DOT agencies).

Based on all the information available to the agency, FHWA concludes that there are no manufacturers that produce the vehicles identified in this notice in such a way that all their steel and iron elements are manufactured domestically. The FHWA's Buy America

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.*

[FR Doc. 2017–21567 Filed 10–5–17; 8:45 am]

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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](http://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