

waiver. In response to this commenter, it is noted that the FAR is not applicable to authorizations under the Federal-aid highway program and FHWA must comply with the applicable Buy America provisions in 23 U.S.C. 313 and FHWA's implementing regulations in 23 CFR 635.410. Five of the commenters expressed partial or full support for the proposed waiver based on the belief that there are no domestic manufacturers that are able to provide a vehicle with 100 percent domestic steel and iron content. Several commenters questioned the need for this specific type of vehicle; however, Merced County's representative explained that this vehicle is necessary to meet their needs in accessing road and bridge construction sites during inclement weather while meeting the vehicle emission requirements of the CMAQ program.

During the 15-day comment period, the FHWA conducted additional review but was unable to locate a domestic manufacturer that could meet a 100 percent domestic steel and iron content requirement. Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers that could meet a 100 percent domestic steel and iron content for the 2012 Ford Escape hybrid four-wheel drive vehicle.

The FHWA has considered Merced County's assertion that its needs for this project require a hybrid four-wheel drive vehicle and that no vehicle on the market currently satisfies a 100 percent domestic iron and steel content requirement. The FHWA has also considered the comments stating that Federal funds should be used to purchase a vehicle that is made in the United States. In considering these comments, the FHWA has reevaluated the applicability of the Buy America requirement as it may apply to the purchase of the vehicles. The FHWA's Buy America requirement was initially established in 1983 when the acquisition of vehicles was not eligible for assistance under the Federal-aid Highway Program. As such, the FHWA's Buy America requirements were tailored to the types of products that are typically used in highway construction, which generally meet a 100 percent domestic steel and iron content requirement.

Vehicles, however, are not the types of products that were initially envisioned as being purchased with Federal-aid highway funds when Buy America was first enacted. In today's global industry, vehicles are assembled with components that are made all over the world. The FHWA is not aware of

any vehicle on the market that can claim to incorporate 100 percent domestic steel and iron content. For instance, the Chevy Volt, which was identified by many commenters in a November 21, 2011, Federal Register Notice as being a car that is made in the United States, comprises only 40 percent United States and Canada content according to the window sticker [http://www.cheersandgears.com/uploads/1298005091/med\\_gallery\\_51\\_113\\_449569.png](http://www.cheersandgears.com/uploads/1298005091/med_gallery_51_113_449569.png). There is no indication of how much of this 40 percent United States/Canadian content is United States-made content. Thus, the FHWA does not believe that application of a domestic content standard should be applied to the purchase of vehicles. However, the FHWA believes that the vehicles should be assembled in the United States. Whenever a person discusses the manufacture of vehicles, the discussion typically refers to where the final assembly takes place. For instance, under a previous proposed waiver notification and comment process, several commenters urged that the waiver be denied because the Chevy Volt is made in the United States. The FHWA interprets these comments as referring to the assembly of the vehicle in Detroit since the Volt window sticker says that the United States/Canada parts content of the vehicle is only 40 percent. While the manufacture of steel and iron products that are typically used in highway construction (such as pipe, rebar, struts, and beams) generally refers to the various processes that go into actually making the entire product, the manufacture of vehicles typically refers to where the vehicle is assembled. Thus, given the inherent differences in the type of products that are typically used in highway construction and vehicles, we feel that simply waiving the Buy America requirement, which is based on the domestic content of the product, without any regard to where the vehicle is assembled would diminish the purpose of the Buy America requirement. Moreover, in today's economic environment with the National unemployment rate over 8 percent, the Buy America requirement is especially significant in that it will ensure that Federal Highway Trust Fund (HTF) dollars are used to support and create jobs in the United States.

Therefore, while the FHWA has not located a vehicle that meets a 100 percent domestic iron and steel content requirement, the FHWA does not find that a complete waiver based on non-availability pursuant to 23 U.S.C. 313(b)(2) is appropriate. However, the FHWA also recognizes that at least a

partial waiver is necessary in order to permit Merced County to proceed with its project. The FHWA believes that a partial waiver that allows the County to purchase vehicles so long as the final assembly of the vehicle as the end product occurs in the United States is appropriate. This approach is similar to the partial waiver given to Alameda County, CA, for the purchase of 79 electric sedans and electric vans in the November 21, 2011, **Federal Register**.

In conclusion, and in light of the above, pursuant to 23 U.S.C. 313(b)(1), the FHWA finds that it is in the public interest to grant a partial waiver from the general 100 percent domestic content requirement that applies to Federal-aid highway projects under Buy America. Under this partial waiver, however, the final assembly of any vehicles purchased with HTF funds must occur in the United States. Thus, so long as the final assembly of the 2012 Ford Escape hybrid four-wheel drive vehicles occurs in the United States, Merced County may proceed to purchase these vehicles consistent with the Buy America requirement.

In accordance with the provisions of section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. 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 the FHWA's Web site via the link provided to the Merced County waiver page noted above.

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

Issued on: March 21, 2012.

**Victor M. Mendez,**

*Federal Highway Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2012-0017]

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated February 7, 2012, the Savage Bingham and Garfield Railroad (SBG) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations

contained at 49 CFR Section 229.23 (which requires a periodic inspection every 92 days) and 49 CFR Section 229.25 (which requires specific tests to be done at every periodic inspection).

The SBG is asking for this testing interval to be extended to 184 days. SBG conducts rail switching operations for customers in the Midvale, UT, area. For this operation, SBG runs two locomotives for fewer hours than normal Class I railroads. This relief will help SBG to lower costs and thereby be able to pass those savings on to its customers. FRA assigned the petition Docket Number FRA-2012-0017.

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 party desires an opportunity for oral comment, 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 May 14, 2012 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 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 online at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on March 26, 2012.

**Ron Hynes,**

*Acting Deputy Associate Administrator for Regulatory and Legislative Operations.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2012-0011]

#### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief. The petition has been assigned Docket Number FRA-2012-0011.

Farmrail System Inc. (Farmrail), located in Clinton, OK, hereby petitions FRA for a waiver from 49 CFR 213.4(e)(3) to allow more than five cars required to be placarded by the Hazardous Materials Regulations (49 CFR part 172) to operate in a single-unit train consist. Farmrail proposes that FRA grant Farmrail a waiver of compliance that will permit more than five tank cars carrying any quantity of crude oil moving from the Anadarko Basin to operate over designated "excepted track" segments. The basin is located between Clinton and Sayre, OK. The 17-mile segment between Elk City and Sayre is the former Rock Island Railroad main track and currently designated as excepted track. Under this proposal, outbound loads would be metered in maximum blocks of 10 cars, while up to 20 inbound empties could be moved as they arrive (without unnecessary delay and loss of velocity); thereby relieving severe track congestion at Elk City. Farmrail claims the relief would not only improve the increasing volume of outbound traffic, but also eliminate bunching of inbound empties at the Elk City bottleneck between Class 2 and excepted track, where longer strings must now be split

into five-car blocks for delivery to the different logistics customers.

Additionally, Farmrail states that a rail shipper in Sayre receives inbound loaded tank cars of methanol at a rate of approximately one or two cars per month. Methanol is a hazardous material. Under this proposal, a loaded car of methanol would displace one empty car of crude oil, and an empty tank car of methanol would displace one loaded car of crude oil. A train leaving Elk City for Sayre would be permitted to have up to 19 empty crude oil cars and one loaded methanol car. Similarly, a train leaving Sayre for Elk City could have 9 loaded crude oil cars and one empty methanol car.

Farmrail states that they have experienced no line-haul derailments between Elk City and Sayre on the 100-pound former mainline rail at 10 mph. Farmrail has installed new ties where there is curvature, so the safety risk for empty tank cars in this extremely rural environment is minimal. Public benefits from issuance of the requested regulatory waiver would include a potential 50-percent reduction in the number of train movements required to move available traffic and associated grade crossing accident exposure. Farmrail train crews have had emergency response and hazmat training, and their operating practices are randomly monitored by a field compliance supervisor. Farmrail proposes to conduct twice-weekly hi-rail inspections of the subject track segment until it can be reclassified.

Additionally, Farmrail states that they are the recipients of the Transportation Investment Generating Economic Recovery or TIGER III grant funds for the rehabilitation of 49 miles of rail line in western Oklahoma to sound Class 2 safety standards. The Clinton-to-Sayre segment is critical to the origination of rapidly growing volumes of crude oil produced from the Anadarko Basin oil and gas reserves. The \$8.4 million-track project, sponsored by the Oklahoma Department of Transportation (ODOT), includes 20 percent in local matching funds and an indicated benefit-cost factor of 56.8, as posted by ODOT on its Web site [www.odot.gov](http://www.odot.gov).

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 party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.