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February 6, 2024

Via Federal eRulemaking Portal: www.regulations.gov

Docket Management System
U.S. Department of Transportation
West Building, Ground Floor, Room W12-140
Routing Symbol M-30
1200 New Jersey Ave., S.E.
Washington, D.C. 20590

RE: Comments by the Railway Supply Institute regarding the Federal Railroad Administration's Notice of Proposed Rulemaking "Freight Car Safety Standards Implementing the Infrastructure Investment and Jobs Act," Docket No. FRA-2023-0021

Dear Sir or Madam:

The Railway Supply Institute ("RSI") appreciates the opportunity to submit the following comments in response to the United States Department of Transportation ("DOT"), Federal Railroad Administration's ("FRA") notice of proposed rulemaking ("NPRM") to amend the Freight Car Safety Standards to implement certain provisions of the Infrastructure Investment and Jobs Act (the "Act"), Docket No. FRA-2023-0021, which was published in the federal register on December 8, 2023.¹ RSI supports the proposed regulation and commends FRA for prioritizing this important rulemaking to implement 49 U.S.C. § 20171. RSI has reviewed and agrees with the detailed comments filed by the Rail Security Alliance ("RSA"). Below we reiterate the key aspects of the NPRM with which RSI agrees, and the primary areas where additional clarity is warranted for successful implementation of the proposed regulations.

The Railway Supply Institute (RSI) is dedicated to advancing safety, innovation, technology, and sustainability within the freight and passenger rail industry serving North American and global markets. As the voice of the industry, RSI acts on behalf of American freight and passenger railroad suppliers and their almost 240,000 employees. RSI is the only trade association representing the entire rail supply industry — manufacturers, distributors, and service providers to the freight car, locomotive,

¹ Freight Car Safety Standards Implementing the Infrastructure Investment and Jobs Act, 88 Fed. Reg. 85,561 (December 8, 2023) (proposed rule).

maintenance-of-way, communications, signaling, leasing, and passenger rail industries. Its members provide all types of goods and services to freight and passenger railroads, rail shippers, and freight car manufacturers and lessors. In addition, RSI members collectively build more than ninety-five percent (95%) of all new railroad tank cars and own and supply for lease over seventy percent (70%) of railroad tank cars operating in North America.

I. RSI Agrees with FRA's Interpretation of the Scope and Applicability of the Proposed Regulation and Supports FRA's Assessment of the Costs and Benefits

RSI agrees with FRA's explanation of the purpose and need for this regulation given Congress' intent to afford the freight railcar industry protections against an influx of state-subsidized rolling stock or components. We further agree with FRA's determination that China is the only country that meets the statutory definition of a "country of concern" at this time.

RSI also agrees with FRA's interpretation of the Act with respect to the following elements of the proposed rule:

- **Applicability.** RSI agrees with FRA's conclusion that the content limitations apply only at the time of manufacture, with content certification obligations imposed on manufacturers alone. The statute does not require FRA to ensure that the content limitations set forth in 49 U.S.C. 20171(b)(2) are met throughout the useful life of the equipment or at each re-entry into service following repair, maintenance, or tank car requalification. Rather, the proposed regulations only apply on a go-forward basis to newly manufactured railcars at the time of manufacture.
- **Components.** RSI agrees with FRA's understanding that Congress intended the term "components" to exclude smaller parts that do not significantly impact manufacturing costs for purposes of calculating content limitations under proposed section 215.401(b)(1).
- **Cost/Benefit.** RSI agrees that the anticipated industry costs associated with this proposed regulation are modest given that industry's compliance obligations for the proposed regulation are an incremental addition to what freight railcar manufacturers in the U.S. must already do to comply with the U.S – Mexico – Canada Agreement ("USMCA").

II. Elements of the Proposed Regulation that Warrant Clarification for Effective Implementation

RSI reiterates its agreement with RSA's comments and includes the items below to emphasize to FRA the importance of addressing these issues final rule:

- **Manufacturer Prohibition.** RSI strongly supports RSA's comments regarding the need to apply a willfulness standard such that FRA will only impose the manufacturer prohibition in proposed Section 215.407(b) where there have been more than three willful violations of Subpart E. Moreover, given the extreme consequences of such a prohibition, it is imperative that FRA ensure that a manufacturer facing an enforcement action receives a written notice of probable violation from the FRA Chief Counsel and that FRA include in the final rule a process through which manufacturers can defend against and appeal a noncompliance finding. During the pendency of any enforcement action, railcar manufacturers must be able

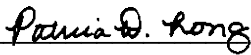
to continue their business operations until there is final agency action to avoid substantial disruption to the North American rail industry.

- **Sensitive Technology.** RSI understands FRA's justification for interpreting the sensitive technology provision of the Act to apply only at the time of manufacture and appreciates FRA's desire to strike the appropriate balance between enhancing the safety and security of the U.S. general railroad system of transportation while minimizing the burden to industry and to FRA. We agree with the clarifications recommended by RSA to better distinguish between active and passive components and similarly urge FRA to revise its definition of "sensitive technology" to expressly include only those devices that are physically located on a railroad freight car consistent with the plain language of the Act.
- **Compliance Certification.** RSI understands proposed Section 215.403 to require railcar manufacturers to certify compliance with the Act after the railcar is built, but before it is first placed into service. RSI expects that railcar manufacturers will submit their certifications to FRA at the time the railcar is registered in Umler, but will not be able to pre-certify compliance before the railcar is fully built (e.g., at the time of a sample car inspection). Like RSA, we support the use of a standardized compliance certification form.
- **Record Keeping.** FRA interprets the Act to require manufacturers to maintain all record to support certification, which includes content calculations. RSI agrees with FRA and urges the agency to include an explicit recordkeeping requirement in the final regulation which requires manufacturers to maintain copies of the annual certifications and supporting documents for a period of 5 years.

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We appreciate the opportunity to comment on the NPRM and support FRA's effort to promulgate regulations to implement this critical law that protects the North American railcar industry.

Sincerely,

A handwritten signature in cursive script, reading "Patricia D. Long", is positioned above a horizontal line.

Patty Long
President
Railway Supply Institute