



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2024-0018]

Notice of Proposed Buy America Waiver for Battery Electric Minibuses and Request for Comment

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) has received multiple requests for a Buy America waiver for battery electric minibuses based on the non-availability of Buy America-compliant vehicles. FTA is proposing a general non-availability waiver of limited duration for vehicles in this class that meet certain criteria. FTA seeks public and industry comment on whether FTA should grant the waiver or a modified version of the waiver.

DATES: Comments must be received by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Late-filed comments will be considered only to the extent practicable.

ADDRESSES: Please submit all comments electronically to the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and follow the instructions for submitting comments.

Instructions: All submissions must refer to the Federal Transit Administration and the docket number of this notice. Note that all submissions received, including any personal information provided, will be posted without change and will be available to the public on <https://www.regulations.gov>. You may review DOT's complete Privacy Act Statement in the *Federal Register* published April 11, 2000 (65 FR 19477), or at <https://www.transportation.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: Jason Pollock, FTA Attorney-Advisor, at (202) 923-6403 or Jason.Pollock@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to seek public comment on whether FTA should grant a non-availability waiver for the procurement of battery electric minibuses.

Background

Under FTA's Buy America statute, FTA may obligate funds for a project to procure rolling stock only if the cost of components and subcomponents produced in the United States is more than 70 percent of the cost of all components of the rolling stock, and final assembly of the rolling stock occurs in the United States. 49 U.S.C. 5323(j)(2)(C). A manufacturer of rolling stock must submit to pre-award and post-delivery audits and independent inspections to verify its compliance with Buy America. 49 U.S.C. 5323(m).

FTA may waive Buy America for an item, among other reasons, if a compliant version is not produced in a sufficient and reasonably available amount or is not of a satisfactory quality. 49 U.S.C. 5323(j)(2)(B) ("non-availability waiver"). FTA cannot deny a request for a non-availability waiver unless FTA can provide the waiver applicant with a written certification that asserts the item is produced in the United States in a sufficient and reasonably available amount; the item produced in the United States is of a satisfactory quality; and includes a list of known manufacturers in the United States from which the item can be obtained. 49 U.S.C. 5323(j)(6).

In 2023, FTA received 3 applications on behalf of 16 transit operators for non-availability waivers to purchase the Karsan e-Jest battery electric minibus. The 3 applicants are the Heart of Iowa Regional Transit Authority on behalf of 10 transit agencies in California, Iowa, and Washington; the Greater Attleboro Taunton Regional Transit Authority in Massachusetts on behalf of 5 transit agencies in Massachusetts; and Alabama A&M University. Combined, the 3 applications seek a minimum order of 57 and a potential maximum order of 261 vehicles.

After reviewing available electric propulsion minibuses, FTA has not identified a vehicle that meets all the requesters' specifications and FTA's Buy America rolling stock standard. Because of the apparent growing interest in vehicles of this type, as evidenced by these requests

and letters of support from over 150 transit agencies across the country, and to foster competition and encourage on-shoring of vehicle manufacturing to the United States, FTA is proposing a general waiver available to any FTA funding recipient and not constrained to any particular manufacturer's offering. The proposed waiver builds on FTA's previous efforts through the Clean Bus Manufacturing Roundtable to encourage the transition to zero emission vehicles by allowing federal participation in the purchase of vehicles that provide public transportation services in areas where full-sized zero emissions buses are not used due to lower passenger counts. Further, the waiver builds on FTA's efforts to encourage domestic manufacturing on-shoring by having a limited duration and phase-in period to give manufacturers sufficient time to establish domestic sourcing and manufacturing capabilities that meet FTA's Buy America rolling stock standard in the smaller bus (aka minibus) market.

Additionally, FTA consulted the National Institute of Standards and Technology's Manufacturing Extension Partnership to conduct supplier scouting for any battery electric minibus supplier capable of meeting FTA's Buy America requirements and the requesters' specifications. Supplier scouting identified no such suppliers.

Proposed Waiver

FTA proposes issuing a general non-availability waiver of FTA's Buy America rolling stock requirements for any vehicle with all of the following characteristics.

- The vehicle is powered by a battery electric propulsion system.
- The vehicle has, or is capable of having, low-floor entry.
- The vehicle is of unibody or monocoque construction (i.e., not body-on-chassis).
- The vehicle has a gross vehicle weight rating or gross vehicle weight of less than 11,794 kg (26,001 pounds) and is designed to transport fewer than 16 seated passengers including the driver.¹

¹ The number of passengers a vehicle is designed to transport is based on the number of designated seats in the vehicle and does not include areas suitable, or even designed for, standing passengers. See 49 CFR 383.5 and

- The vehicle is not required to report to the National Highway Traffic Safety Administration under the American Automobile Labelling Act. FTA previously issued a partial Buy America waiver for vehicles subject to AALA reporting (*Notice of Partial Buy America Waiver for Vans and Minivans*, 87 FR 64534 (Oct. 25, 2022)), and does not intend to alter the terms of that current waiver by this proposed action.

To encourage potential market entrants to build the requisite domestic supply chains and establish a final assembly facility in the United States, FTA proposes that the waiver would phase out over time. For a contract for a vehicle meeting all the above requirements awarded more than two years after the effective date of the waiver, this waiver would only apply where vehicle final assembly occurs in the United States. This waiver would expire three years after it is finalized, or upon FTA's publication of a *Federal Register* notice rescinding the waiver after determining that a fully Buy America-compliant vehicle has become available, whichever occurs first.

Impacts of the Waiver

The availability of electric minibuses will contribute to the reduction of greenhouse gas emissions and environmental justice.

Beginning with a 2022 Dear Colleague Letter on Cutaway Rebuild Useful Life, FTA has acknowledged and made efforts to address supply constraints and delivery delays of body-on-chassis vehicles experienced by FTA recipients. One of the requesters for this proposed waiver reported waiting times of 24-36 months to receive delivery of body-on-chassis vehicles. This proposed waiver continues FTA's efforts to relieve delays experienced by transit operators due to limited chassis availability for transit vehicles by responding to recipients' requests for vehicles of unibody or monocoque construction. The requesters' specification for a unibody or monocoque construction and zero-emission propulsion would make a new vehicle type available

for FTA recipients to provide zero-emission public transportation services on routes or in operations that are most efficiently served by minibuses due to lower passenger counts.

Request for Comment

This notice satisfies FTA's requirement to publish any proposed Buy America waiver in the *Federal Register* and provide the public with a reasonable period of time for notice and comment. 49 U.S.C. 5323(j)(3) and section 70937(b)(1) of Pub. L. 117-58.

FTA seeks public and industry comment from all interested parties. In particular, FTA seeks comment regarding whether the waiver should be approved, and, if so, whether it should be modified from FTA's proposal and why. Relevant information and comments will help FTA fully establish the facts surrounding the waiver requests and FTA's proposal and inform its ultimate decision on whether to grant the waiver.

Veronica Vanterpool,

Deputy Administrator.

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