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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2024-0018]

Supplemental Notice of Partial Buy America Waiver for Minibuses

AGENCY: Federal Transit Administration, Department of Transportation (DOT).

ACTION: Supplemental notice and request for comment.

SUMMARY: On December 20, 2024, the Federal Transit Administration (FTA) published a notice of proposed Buy America waiver for certain battery-electric minibuses. FTA has not made a final decision on the proposal. FTA is seeking supplemental comment as to whether FTA should remove the proposed requirement that the minibuses be battery-electric propulsion.

DATES: Comments must be received by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Jaamal Jennings, FTA Attorney-Advisor, at jaamal.jennings@dot.gov.

SUPPLEMENTARY INFORMATION:

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 if final assembly of the rolling stock occurs in the United States. 49 U.S.C. 5323(j)(2)(C). FTA implements these Buy America requirements by rule at 49 CFR part

661 and requires offerors to certify affirmatively that they comply with Buy America as implemented by FTA's rule. 49 CFR 661.12. A manufacturer delivering more than a minimum quantity of rolling stock must submit to pre-award and post-delivery reviews and independent inspections to verify its compliance with Buy America. 49 U.S.C. 5323(m); 49 CFR part 663. In addition to Buy America requirements, a bus model must pass testing for safety and performance before it can be purchased using FTA funds. 49 U.S.C. 5318.

FTA may waive Buy America requirements for an item if, among other reasons, a compliant version of the item 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 three waiver applications on behalf of 16 transit operators for non-availability waivers to purchase the E-Jest battery-electric minibus. The E-Jest is made by the Turkish company Karsan Otomotiv Sanayii ve Ticaret A.S. ("Karsan") and sold in the United States by the Damera Corporation. In response to these three waiver applications, on December 20, 2024, FTA proposed a general waiver¹ (89 FR 104285, December 20, 2024) for any vehicle with all of the following characteristics: battery-

¹ A general waiver means the waiver would be available to any FTA grant recipient, not just the waiver applicants.

electric propulsion; low-floor entry; unibody construction; gross vehicle weight rating or gross vehicle weight of less than 11,794 kg (26,001 pounds) and designed to transport fewer than 16 seated passengers including the driver; and not of a type already covered by FTA's Partial Buy America Waiver for Vans and Minivans (87 FR 64534, Oct. 25, 2022). Additionally, to encourage onshoring of manufacturing and supply chains, FTA proposed the waiver would require U.S. final assembly after two years and would expire entirely after three years, or upon a Buy America-compliant vehicle becoming available, whichever occurred first.

Comments Received

FTA received 67 comments on the proposed waiver. Most comments were in favor of the waiver as proposed. These comments generally came from transit providers or their industry associations, autonomous vehicle service providers, and companies looking to establish manufacturing in the United States that seek a customer base while building up to full Buy America compliance.

Comments opposed to the waiver generally came from vehicle manufacturers or dealers already doing business in the United States. Three vehicle manufacturers opposed the proposed waiver. None of the three manufacturers claimed to provide a vehicle that responded to all the specifications in FTA's proposed waiver. Only one of the three manufacturers explicitly claimed Buy America compliance for a partially responsive vehicle.

Revision to Proposed Waiver

FTA is proposing to eliminate the specification in its December 2024 proposed waiver that the minibuses be battery-electric. Eliminating the battery-electric

specification would allow transit operators to decide for themselves the propulsion type that is best suited to their operations and their communities. The rest of the proposed waiver would remain the same, and battery-electric vehicles still would be available under the revised proposed waiver along with other propulsion types.

As revised, the proposed waiver would apply to any vehicle with all of the following characteristics and be subject to the following phase-out:

- 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;² and
- The vehicle is not of a type already covered by FTA's Partial Buy America Waiver for Vans and Minivans (87 FR 64534, *supra*) (*i.e.*, is not required to report to the National Highway Traffic Safety Administration under the American Automobile Labelling Act).

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 the effective date. To allow onshoring of newer propulsion types at the same time as more mature propulsion types are available to recipients, FTA proposes that the waiver will remain in effect for the proposed three-year term.

² 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 Federal Motor Carrier Safety Administration guidance: <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/one-definition-cmv-vehicle-designed-transport-16-or-more>.

Request for Supplemental Comments

FTA requests supplemental comments from all interested parties on its proposal to eliminate the battery-electric requirement. Should FTA approve the waiver as revised? Should the waiver be further modified in some way? Relevant information and comments will help FTA fully establish the facts surrounding the waiver requests and inform FTA's ultimate decision whether to grant the waiver.

If a comment asserts a domestic vehicle meeting FTA's proposed specifications already exists, please be clear about whether the vehicle complies with FTA's specific Buy America requirements for rolling stock as set forth in 49 U.S.C. 5323(j)(2)(C) and 49 CFR part 661. Has the vehicle passed a post-delivery review required by 49 U.S.C. 5323(m), and if so, where and when? Any other relevant information, for example, regarding geographic availability or production quantities, will be useful to FTA. (Authority: 49 U.S.C. 5323; 49 CFR 1.91.)

Matthew B. Cahill,

Acting Deputy Administrator.

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