



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0020]

Notice of Buy America Waiver

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Buy America Waiver.

SUMMARY: This notice provides NHTSA's finding with respect to a request to waive the requirements of Buy America from the New York Governor's Traffic Safety Committee (GTSC). NHTSA finds that a non-availability waiver of the Buy America requirement is appropriate for the purchase of 205 Samsung Galaxy Note 10.1 Tablet packages using Federal highway traffic safety grant funds because there are no suitable products produced in the United States.

DATES: The effective date of this waiver is [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted using any one of the following methods:

- **Mail:** Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.
- **Fax:** Written comments may be faxed to (202) 493-2251.

- **Internet:** To submit comments electronically, go to the Federal regulations website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may also call the Docket at 202-366-9324.

FOR FURTHER INFORMATION CONTACT:

For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202-366-0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202-366-5263). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

This notice provides NHTSA’s finding that a waiver of the Buy America requirement, 23 U.S.C. 313, is appropriate for New York’s GTSC to purchase Samsung Galaxy Note 10.1 (2014 Edition) Tablet packages using grant funds authorized under 23 U.S.C. 405(d) (section 405) and its predecessor, 23 U.S.C. 410(d) (section 410).¹ Section 405(d) funds are available for use by State highway safety programs to support effective programs to reduce driving under the influence of alcohol, drugs, or the combination of alcohol and drugs, including enforcement

¹ 23 U.S.C. 410 was repealed by the Moving Ahead for Progress in the 21st Century (MAP-21) Act, Pub. L. 112-141 section 31109(d), 126 Stat. 756 (2012), and recodified at 23 U.S.C. 405(d).

efforts. 23 U.S.C. 405(d). States may use Section 405(d) grant funds for drug recognition expert training for law enforcement and equipment and related expenditures used in connection with impaired driving enforcement. States may use Section 410 grant funds for the procurement of technology and equipment, including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles.

Buy America provides that NHTSA “shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.” 23 U.S.C. 313. However, NHTSA may waive those requirements if “(1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.” 23 U.S.C. 313(b). In this instance, NHTSA has determined that non-availability waivers are appropriate for the tablet packages that New York’s GTSC seeks to purchase using Federal grant funds.

The GTSC seeks a waiver to purchase 205 Samsung Galaxy Note 10.1 Tablet packages, including a tablet, power cord, HD card, and case, at \$529 per unit to be used by New York’s Drug Recognition Experts (DREs) to conduct drug impaired driving evaluations in the field. New York tested three tablets, including the Samsung Note, a Lenovo ThinkPad, and an Asus, to determine which tablet was best suited to meet the GTSC’s needs. All of the tablets tested are manufactured outside the United States: the Samsung tablet tested is made in Vietnam, and the ThinkPad and Asus tablets are made in China. New York states that the most important feature

needed on the tablet is a stylus that is capable of drawing clear graphics related to the various tests conducted during the course of an evaluation. New York states that the stylus is important because the DREs need a drawing capability to fill out the multiple images on a Drug Influence Evaluation form. For example, DREs may use a stylus to draw dots on a diagram of an arm to signify drug track marks and to indicate on a diagram the exact location a suspect touches on his or her face when asked to touch a finger to the nose or other areas on the face. New York states that a stylus is necessary to perform these tasks. Further, a stylus will enable a DRE to use these tablet functions while wearing gloves in cold field conditions.

The Samsung Galaxy Note 10.1 was selected by GTSC because it has an S Pen that, according to New York, allows for smooth writing and drawing. The Samsung Note is also preferred because the Samsung S Pen has a dedicated slot in the tablet and does not require additional batteries, such that it is lighter than other actively digitized styluses. The Samsung Note has an 8 megapixel camera with flash and can take videos. It has a 2560 x 1600 pixel resolution that is able to distinguish between a finger and a stylus and can display its screen onto a television using an HDMI adapter. It has a quad core 1.3GHz processor and 3GB of ram. It also has a 32 GB hard drive, which New York states is needed to ensure that the DREs do not run out of space. New York also states that the Samsung Note has a more than 9 hour battery life when in use and can last up to 200 hours while idling. Finally, the Samsung Note is an Android device that runs on the Android KitKat 4.4.2 operating system, which is compatible with the application that will be used by DREs to capture evaluation data in the field on the tablets that the DREs will then upload to the DRE database.

New York's GTSC conducted phone calls, emails, and web searches, but was unable to identify any domestically manufactured tablet packages. NHTSA conducted similar assessments² and was unable to locate domestic manufacturers of tablet packages with the specifications required by New York's GTSC. Through this assessment, NHTSA learned that Union Built PC, a Maryland-based hardware and software company, assembles tablets in the United States.³ Union Built PC produces one tablet, the UBW-Q410. The UBW-Q410 runs on an Android 4.1.1 operating system. It has a 1.5 GHz Quad Core processor and 3GB of ram. It has a max resolution of 1280 x 800 pixels and a 5 megapixel camera. Unlike the Samsung Note, the UBW-Q410 is not sold with a stylus. Customers may purchase this tablet through Union Built PC's website. Although this tablet is made in the United States, it appears insufficient to meet the New York GTSC's purposes because it is not designed for use with a stylus. Since NHTSA agrees that a tablet package that meets the requirements identified by GTSC for use by its DREs is unavailable from a domestic manufacturer, the Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to GTSC in order to purchase 205 Samsung Galaxy Note Tablets. This waiver applies to New York and all other States seeking to use section 405(d) and eligible section 410 funds to purchase Samsung Galaxy Note 10.1 Tablet packages for the purposes mentioned herein. This waiver will continue through fiscal year 2015 and will allow the purchase of these items as required for New York's GTSC. Accordingly, this waiver will expire at the conclusion of fiscal year 2015 (September 30, 2015).

² NHTSA conducted internet searches and reviewed several websites that catalog domestic made products: www.usaonly.us; www.americansworking.com; www.madeinamericaforever.com; www.unionbuiltpc.com; www.madeinusa.org; and www.computersmadeinusa.com.

³ Union Built PC's internet website states that final assembly and/or configuration of its products occur in the United States and that it uses foreign and domestic parts.

In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate for the Samsung Galaxy Note Tablet packages.

Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider this finding if, through comment, it learns of additional relevant information regarding its decision to grant the New York GTSC's waiver request.

This finding should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

Authority: 23 U.S.C. 313; Pub. L. 110-161.

Issued in Washington, DC under authority delegated in 49 CFR 1.95.

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Acting Chief Counsel

Billing Code: 4910-59-P

[FR Doc. 2015-08955 Filed: 4/17/2015 08:45 am; Publication Date: 4/20/2015]