



4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

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

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the obligation of Federal-aid funds for 4 California projects involving the acquisition of vehicles under the Congestion Mitigation and Air Quality Improvement program on the condition that they be assembled in the U.S, on the basis that there are no domestic manufacturers that produce the vehicles identified in this notice in such a way that all their steel and iron elements are manufactured domestically.

DATES: The effective date of the waiver is **[INSERT DATE ONE DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, 202-366-1562, or via e-mail at Gerald.Yakowenko@dot.gov. For legal questions, please contact Mr. Jomar Maldonado, FHWA Office of the Chief Counsel, 202-366-1373, or via e-mail at Jomar.Maldonado@dot.gov. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Federal Register's home page at <http://www.archives.gov> and the Government Publishing Office's database.

Background

This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the obligation of Federal-aid funds for 4 California projects involving the acquisition of vehicles under the Congestion Mitigation and Air Quality Improvement (CMAQ) program. The waiver would apply to approximately 29 vehicle acquisitions on the condition that they be assembled in the United States. These involve 17 compressed natural gas solid waste trucks for the City of Visalia (CMLNI-5044(117)), 1 propane powered school bus for the City of Visalia (CMLNI-5044(119)), 6 diesel refuse trucks for the City of Tulare (CMLNI-5072(061)), and 5 compressed natural gas refuse trucks for the City of Porterville (CMLNI-5122(086)).

Title 23, Code of Federal Regulations (CFR), section 635.410 requires that steel or iron materials (including protective coatings) that will be permanently incorporated in a Federal-aid project must be domestically manufactured. For FHWA, this means that all the processes that modified the chemical content, physical shape or size, or final finish of the material (from initial melting and mixing, continuing through the bending and coating) occurred in the United States. The statute and regulations create a process for granting waivers from the Buy America requirements when its application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. In 1983, FHWA determined that it was both in

the public interest and consistent with the legislative intent to waive Buy America for manufactured products other than steel manufactured products. However, FHWA's national waiver for manufactured products does not apply to the requests in this notice because they involve predominately steel and iron manufactured products. The FHWA's Buy America requirements do not have special provisions for applying Buy America to "rolling stock" such as vehicles or vehicle components (see 49 U.S.C. 5323(j)(2)(C), 49 CFR 661.11, and 49 U.S.C. 24405(a)(2)(C) for examples of Buy America rolling stock provisions for other DOT agencies).

Based on all the information available to the agency, FHWA concludes that there are no manufacturers that produce the vehicles identified in this notice in such a way that all their steel and iron elements are manufactured domestically. The FHWA's Buy America requirements were tailored to the types of products that are typically used in highway construction, which generally meet the requirement that steel and iron materials be manufactured domestically. In today's global industry, vehicles are assembled with iron and steel components that are manufactured all over the world. The FHWA is not aware of any domestically produced vehicle on the market that meets FHWA's Buy America requirement to have all its iron and steel be manufactured exclusively in the United States. For example, the Chevrolet Volt, which was identified by many commenters in a November 21, 2011, Federal Register Notice (76 FR 72027) as a car that is made in the United States, is comprised of only 45 percent of United States and Canadian content according to the National Highway Traffic Safety Administration's Part 583 American Automobile Labeling Act Report Web page at

<http://www.nhtsa.gov/Laws+&+Regulations/Part+583+American+Automobile+Labeling>

+Act+(AALA)+Reports. Moreover, there is no indication of how much of this 45 percent content is domestically manufactured (from initial melting and mixing) iron and steel content.

Consistent with the Consolidated Appropriations Act of 2017 (Pub. L. 115-31), FHWA published two notices seeking comments whether a waiver is appropriate on its Web site, <https://www.fhwa.dot.gov/construction/contracts/cmaq170321.cfm> and <https://www.fhwa.dot.gov/construction/contracts/cmaq170725.cfm>. The FHWA received no comments in response to the publication. Based on FHWA's conclusion that there are no domestic manufacturers that can produce the vehicles identified in this notice in such a way that all their steel and iron materials are manufactured domestically, FHWA finds that a waiver of FHWA's Buy America requirements is appropriate under the non-availability criteria (23 U.S.C. 313(b)(2) and 23 CFR 635.410(c)(2)(ii)). However, FHWA believes that it is consistent with the Buy America requirements to impose the condition that the vehicles and the vehicle components be assembled in the United States. Requiring final assembly to be performed in the United States is consistent with past guidance to FHWA Division Offices on manufactured products (see Memorandum on Buy America Policy Response, Dec. 22, 1997, <http://www.fhwa.dot.gov/programadmin/contracts/122297.cfm>). A waiver of the Buy America requirement without any regard to where the vehicle is assembled would diminish the purpose of the Buy America requirement. Moreover, in today's economic environment, the Buy America requirement is especially significant in that it will ensure that Federal-aid funds are used to support and create domestic jobs. This approach is similar to the conditional waivers previously given for various vehicle projects. Thus, so

long as the final assembly of the 29 vehicles occurs in the United States, applicants to this waiver request may proceed to purchase these vehicles consistent with the Buy America requirement.

In accordance with the provisions of section 117 of the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Technical Corrections Act of 2008” (Pub. L. 110-244), FHWA is providing this notice of its finding that a non-availability waiver of Buy America requirements is appropriate on the condition that the vehicles identified in the notice are assembled domestically. 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 FHWA’s Web site via the link provided to the waiver page noted above.

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

Issued on: October 2, 2017.

Brandye L. Hendrickson,

Acting Administrator,

Federal Highway Administration.

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