

Comments of the Transportation Departments of  
Idaho, Montana, North Dakota, South Dakota, and Wyoming  
to the  
Federal Transit Administration (FTA)  
Regarding  
Notice of Proposed Temporary Buy America Waiver and Request for Comments  
Docket No. FTA-2022-0013  
July 28, 2022

---

The transportation departments of Idaho, Montana, North Dakota, South Dakota and Wyoming (“we” or “our”) support adoption of the proposed conditional partial waiver from Buy America requirements for certain non-ADA accessible passenger vans and minivans that is the subject of this docket. See 87 Federal Register 43101 (July 19, 2022). As discussed below, we also offer suggestions for a modification/clarification of the proposed waiver.

Prompt adoption of such a partial conditional waiver would be in the public interest. This includes the public interest in achieving the benefits of investment in such vans to provide transit service.

We support the goal of buying American made products, including transit vans and minivans. Accordingly, we understand that, under this proposed waiver, final assembly of a subject van or minivan would still have to be in the U.S. and the engine of the van or minivan would have to be of U.S. origin.

Yet, as is clear from FTA’s proposal in this docket, there will be manufactured products that play a role in providing transit service but are not available in versions that qualify as made in America, including in a reasonably available amount or of satisfactory quality. In such cases a waiver or partial waiver is highly appropriate, so that recipients of FTA funds can still proceed to make transportation investments.

We specifically note that in this docket FTA has proposed this waiver for a period of two years “or upon a fully Buy America-compliant van or minivan becoming available, whichever comes first.” 87 Federal Register 43102.

The two-year period is sufficiently long to enable providers to plan acquisition of vans and minivans. However, we have concerns regarding the wording for early termination. For example, we suggest that there should be some period of time between an FTA announcement that equipment that meets Buy America requirements has become available and the end of the waiver, such as 90 days. Otherwise, planned investments in subject vans and minivans could be cut off without warning.

This concern is compounded by the wording of that condition – “upon a fully Buy America-compliant van or minivan becoming available.” We ask FTA to clarify that the phrase refers to more than the literal availability of one Buy America-compliant vehicle, but to availability in the sense that a waiver would not be available – e.g., available in sufficient quantity and of satisfactory quality.

In general, we commend FTA for the proposal to grant a conditional partial waiver in this docket as to certain vans and minivans, but have suggested that the language regarding early termination of the waiver should be clarified.

More broadly, we urge FTA to continue, where appropriate, to propose waivers from Buy America requirements for articles that are not available in Buy America-compliant form, including available in reasonable quantities and satisfactory quality. Taking such a pragmatic approach is the way that FTA and, more broadly, USDOT, can work with transit providers and states to meet the transportation investment goals of the new infrastructure law as well as Buy America requirements.

The transportation department of Idaho, Montana, North Dakota, South Dakota and Wyoming thank FTA for the opportunity to comment. We respectfully request that further action on the subject matter of this docket be in accord with our comments.

\*\*\*\*\*