



September 9, 2024

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Ms. Veronica Vanterpool
Acting Administrator
Federal Transit Administration
U.S. Department of Transportation
Docket Operations
M-30, West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: Notice of FTA's Review of Its Partial Waiver of Buy America Requirements for Vans and Minivans and Request for Comment (Docket No. FTA-2024-0007)

Dear Acting Administrator Vanterpool,

The American Public Transportation Association (APTA) represents a \$79 billion industry that directly employs 430,000 people and supports millions of private-sector jobs. We greatly appreciate the opportunity to respond to the Federal Transit Administration's (FTA) Review of Its Partial Waiver of Buy America Requirements for Vans and Minivans and Request for Comment (Docket No. FTA-2024-0007), published in the *Federal Register* at 89 FR 68027 on August 22, 2024.

APTA strongly supports Buy America and applauds the Administration's continued efforts to ensure the use of American-made materials in FTA-funded projects. These Buy America requirements are critical to U.S. job creation, timely project delivery, quality, and building U.S. manufacturing capacity.

Although we share these Buy America goals, APTA strongly urges FTA to extend the 2022 Partial Buy America Waiver for vans and minivans that expires on October 24, 2024, because Buy America-compliant vehicles are not available in the United States. We urge FTA to extend the partial, time-limited, general nonavailability Buy America waiver for five years without change.

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The Partial Buy America Waiver Is Essential to Vanpool Services, which Provide Critical Access to Communities and Advance Key Climate, Equity, and Service Goals

Vanpools provide critical access to communities and advance key climate, equity, and service goals. More than 100 public transit agencies use vanpools to provide critical access to their customers in rural, suburban, and urban communities. In 2022, vanpools provided almost 20 million passenger trips on 763 million passenger miles of service.¹

Without a waiver of FTA's Buy America requirements, public transit agencies may not be able to offer these crucial vanpool services. For more than 15 years, transit agencies have been unable to acquire Buy America-compliant, unmodified non-ADA accessible vans and minivans. For this reason, FTA has considered and granted waivers of Buy America requirements for vans and minivans on at least four separate occasions.² In each instance, FTA sought public comment, and the overwhelming majority of comments expressed strong support for the proposed waiver because of the nonavailability of Buy-America compliant vehicles.³ Most recently, FTA issued a Partial Buy America Waiver on October 25, 2022, which expires on October 24, 2024.⁴

If FTA does not extend the 2022 Partial Buy America Waiver, it could cause substantial harm to public transit agencies' mobility programs, and directly impact their efforts to address climate change, equity, and service to the elderly and persons with disabilities. APTA strongly concurs with FTA's statement in its review of the 2022 Partial Buy America Waiver:

Without a waiver, recipients could not procure these vehicles with FTA funds, which may result in such consequences as the operation of vehicles beyond their useful life; procurement of larger Buy America compliant vehicles that are more expensive and have less desirable access/egress characteristics compared to minivans; or termination of vanpool programs or failure to form new vanpool service, which could have climate change and equity impacts because vanpools provide an important transportation alternative to private passenger vehicles both in large cities and rural areas, and service to the elderly and disabled who do not need an ADA-accessible van.⁵

¹ APTA, [2023 Public Transportation Fact Book](#); FTA, [National Transit Database](#) (Accessed September 2024).

² See FTA, [Notice of Buy America Waiver for Minivans and Minivan Chassis](#), 75 Fed. Reg. 35123 (June 21, 2010) (2010 Buy America Minivan and Chassis Waiver); FTA, [Notice of Buy America Waiver for Minivans](#), 78 Fed. Reg. 71025 (November 27, 2013) (2013 Buy America Minivan Waiver); FTA, [Notice of Buy America Waiver of Domestic Content Requirement for Minivans and Vans](#), 81 Fed. Reg. 72667 (October 20, 2016) (2016 Buy America Domestic Content Waiver); and FTA, [Notice of Partial Buy America Waiver for Vans and Minivans](#), 87 Fed. Reg. 64534 (October 25, 2022) (2022 Partial Buy America Waiver).

³ See *id.*

⁴ FTA, 2022 Partial Buy America Waiver; FTA, [Notice of FTA's Review of Its Partial Waiver of Buy America Requirements for Vans and Minivans and Request for Comment](#), 89 Fed. Reg. 68027, 68028 (August 22, 2024).

⁵ FTA, [Notice of Proposed Buy America Waiver and Request for Comment](#), 87 Fed. Reg. 43102 (July 19, 2022). See also FTA, 2016 Buy America Domestic Content Waiver.

Extend the Partial Buy America Waiver for Five Years

Given the potential substantial harm to public transit agencies' mobility, climate, equity, and service objectives, APTA strongly urges FTA to extend the 2022 Partial Buy America Waiver for vans and minivans because Buy America-compliant vehicles are not available in the United States. **We urge FTA to extend the partial, time-limited, general nonavailability Buy America waiver that expires on October 24, 2024, for five years for several reasons.**

Nonavailability of Buy America-Compliant Vans and Minivans

First, APTA is not aware of any manufacturer of unmodified, non-ADA-accessible vans or minivans that meets FTA's Buy America requirements. These vans and minivans remain a critical part of public transit agencies' operations, and it is important that agencies be able to purchase these vehicles to provide equitable service to rural, suburban, and urban communities.

No Change in Market Conditions

Second, there has been no change in market conditions that led FTA to issue its 2022 and prior Partial Buy America Waivers and no evidence to suggest that a manufacturer of Buy America-compliant vans and minivans will enter the market.

For more than 15 years, transit agencies have been unable to acquire Buy America-compliant, unmodified non-ADA accessible vans and minivans.⁶ Moreover, neither the public transit industry nor FTA have been able to identify a manufacturer of vans and minivans that meets FTA's Buy America domestic content requirements for a decade.⁷

In addition, there is no expectation that these market conditions will change in the near term. Over the past decade, both the public transit industry and FTA have discussed Buy America requirements with manufacturers, and they are uninterested in meeting FTA requirements. Public transit agencies cannot verify domestic content of vans and minivans because manufacturers have been unwilling to sign the required Buy America certification regarding minimum domestic content or submit to FTA's pre-award or post-delivery audit requirements. As FTA noted two years ago, manufacturers have stated that they are unwilling to comply with FTA Buy America requirements for several reasons, including:

- FTA-funded procurements do not generate a large percentage of their sales of such vehicles and their distribution chain is not set up to comply with FTA Buy America requirements;
- It is burdensome to determine the components and subcomponents and their origin for Buy America audit purposes; and

⁶ *Supra* note 2.

⁷ See FTA, [Notice of Buy America Waiver of Domestic Content Requirement for Minivans and Vans](#), 81 Fed. Reg. 72667 (October 20, 2016); See also FTA, 2022 Partial Buy America Waiver.

- There are concerns regarding the confidentiality of component pricing in audit reporting.⁸

There is no evidence to suggest that manufacturers' concerns with complying with FTA's Buy America requirements have changed.

Providing a Five-Year Buy America Waiver

Third, given the experiences of the past 15 years and unchanging market conditions, APTA strongly urges FTA to extend the partial, time-limited, general nonavailability Buy America waiver for five years. If, during the five-year period, FTA determines that a fully Buy America-compliant vehicle has become available, it can rescind the waiver. In the past, FTA has used this process to rescind a Buy America waiver when a U.S. manufacturer began producing Buy America-compliant vehicles.⁹

Extend the Current Buy America Waiver Without Change

APTA urges FTA to extend the current waiver without change. The 2022 Partial Buy America Waiver strikes the appropriate balance between making vanpool vehicles available to public transit agencies and maximizing U.S. manufacturing activity in accordance with Executive Order 14005, *Ensuring the Future is Made in All of America by All of America's Workers*. Under the 2022 Buy America waiver, FTA requires that:

- final assembly must be in the United States;
- the country of origin of the engine or motor must be the United States, as reported to the National Highway Traffic Safety Administration (NHTSA) under the American Automobile Labelling Act (AALA);
- the waiver is available to all FTA grant recipients; and
- the waiver is time limited.¹⁰

The 2022 Partial Buy America Waiver expires in 45 days. If FTA imposes new requirements, it will slow the Administration's decision making and the waiver is likely to expire, resulting in a gap in which public transit agencies cannot acquire FTA-funded vans and minivans for use in public transportation.

⁸ FTA, [Notice of Proposed Buy America Waiver and Request for Comment](#), 87 Fed. Reg. 43101, 43102 (July 19, 2022).

⁹ For instance, in 2012, FTA rescinded its Buy America final assembly waiver for minivans when a U.S. manufacturer produced vehicles in the United States. FTA, [Decision to Rescind Buy America Waiver for Minivans and Minivan Chassis](#), 77 Fed. Reg. 71673 (December 3, 2012); *See also* FTA, 2016 Buy America Domestic Content Waiver.

¹⁰ FTA, 2022 Partial Buy America Waiver.

In addition, FTA acknowledges that the 2022 Partial Buy America Waiver requirements already limit public transit agencies' vehicle selection of vans and minivans.¹¹ If FTA imposed new Buy America requirements, such as minimum domestic content percentages or specific part requirements (e.g., U.S.-manufactured transmissions), it could further limit vehicle selection and slow public transit agencies' procurements of these vehicles. As a result, new requirements would directly impact agencies' efforts to provide critical access and meet mobility, climate, equity, and service goals in rural, suburban, and urban communities throughout the nation. Given the dearth of available unmodified vans and minivans that meet FTA's 2022 requirements, APTA does not support additional requirements that will further limit the availability of these vehicles.

Moreover, a five-year extension of the 2022 Partial Buy America Waiver without change meets the specific waiver principles and criteria of the Build America, Buy America Act (BABA),¹² as outlined by the Office of Management and Budget's 2023 Implementation Guidance: it is time-limited, targeted, and conditional.¹³

Promote Domestic Production of Buy America-Compliant Vans and Minivans

Finally, APTA recommends several steps that FTA undertake to promote the domestic production of Buy America-compliant vans and minivans during the proposed five-year period of the Partial Buy America Waiver. APTA encourages FTA to work with the U.S. Department of Transportation's Office of the Secretary, NHTSA, the U.S. Department of Commerce (including the National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership), and APTA to establish a working group to begin a dialogue with manufacturers of vans and minivans to determine the specific hurdles to their willingness to meet FTA's Buy America requirements. If the Administration and the public transit industry better understood the manufacturers' specific objections to FTA's Buy America requirements, we may be able to develop solutions to address their concerns and increase U.S. manufacturing. For instance, APTA recommends that FTA work with manufacturers to determine whether they would consider submitting to a pre-award and post-delivery audit process if FTA conducted it on each new vehicle model year, as opposed to requiring audits of each individual procurement.¹⁴

In summary, APTA supports Buy America and the Administration's efforts to strengthen U.S. manufacturing capacity. At the same time, APTA strongly urges FTA to extend the 2022 Partial Buy America Waiver for vans and minivans for five years without change because Buy America-compliant vehicles are not available in the United States. Vanpools provide critical access to communities and advance key mobility, climate, equity, and service goals. A five-year extension of the Partial Buy America Waiver without change strikes the appropriate balance between making vanpool vehicles available to public transit agencies and maximizing U.S. manufacturing.

¹¹ See FTA, 2022 Partial Buy America Waiver.

¹² Infrastructure Investment and Jobs Act, P.L. 117-58, Title IX, Subtitle A, §§ 70901-70927.

¹³ See Office of Management and Budget, M-24-02, [Implementation Guidance on Application of Buy America Preferences in Federal Financial Assistance Programs for Infrastructure](#), October 25, 2023, at 9.

¹⁴ In 2016, FTA stated that this proposal had merit, and the agency would take it into consideration in a future action. FTA, 2016 Buy America Domestic Content Waiver.

Acting Administrator Veronica Vanterpool

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APTA stands ready to assist the Administration in our shared goals of strengthening U.S. manufacturing and providing critical access and meeting mobility, climate, equity, and service goals in rural, suburban, and urban communities.

If you have any questions regarding this letter, please contact Ward McCarragher, Vice President, Government Affairs and Advocacy, at wmccarragher@apta.com.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Paul P. Skoutelas". The signature is written in a cursive style with a large, prominent "P" and "S".

Paul P. Skoutelas
President and CEO