

Dated: October 28, 2024.

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*Vice President, Valley Engagement & Strategy,
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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

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

ACTION: Notice.

SUMMARY: This notice supersedes a previously published notice on this topic. This notice provides information regarding FHWA's finding that it is appropriate to grant a non-availability Buy America waiver to the Utah Department of Transportation (UDOT) for procurement and installation of 16 suspended explosive charge remote avalanche control systems (RACS), which contain non-domestic iron and steel components, along Mount Superior overlooking SR-210 in Little Cottonwood Canyon, Utah. The waiver relates specifically to iron and steel components that are part of the tower, deployment box, and charges of the RACS.

DATES: The effective date of the waiver is October 23, 2024.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, (202) 366-1562, or via email at Brian.Hogge@dot.gov. For legal questions, please contact Mr. David Serody, FHWA Office of the Chief Counsel, (202) 366-1345, or via email at David.Serody@dot.gov. Office hours for 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: www.FederalRegister.gov and the U.S. Government Publishing Office's database at: www.GovInfo.gov.

Background

The FHWA's Buy America requirements for steel and iron are set forth at 23 U.S.C. 313 and 23 CFR 635.410 and require that all steel and iron that are permanently incorporated into a Federal-aid project must be produced in the United States unless a

waiver is granted, including predominantly steel and iron components of a manufactured product.¹ Under these requirements, all manufacturing processes, including the application of a coating, must occur in the United States.²

Under 23 U.S.C. 313(b)(2) and 23 CFR 635.410(c)(1)(ii), FHWA may waive the application of its Buy America requirement for steel and iron when products are not produced in the United States in sufficient and reasonably available quantities of a satisfactory quality. This notice provides information regarding FHWA's finding that it is appropriate to grant UDOT a non-availability Buy America waiver for procurement of 16 suspended explosive charge RACS, which include non-domestic iron and steel components, for installation along Mount Superior overlooking SR-210 in Little Cottonwood Canyon, Utah. For each of the 16 RACS, this waiver will cover only: (i) the tower; (ii) the deployment box; and (iii) the charges (collectively "waiver items"). This waiver does not apply to the reinforced foundation of the RACS, which consists of anchor kits and a base plate; such foundation must be domestically sourced and compliant with FHWA's Buy America requirements. This notice supersedes the notice previously published on October 22, 2024, at 89 FR 84435.

Background on the Project: In 2020, the U.S. Army asked all members of the Avalanche Artillery Users of North America Committee to submit an exit plan for their use of military artillery. Currently, UDOT leases a P-Ridge howitzer from the U.S. Army to fire live artillery ammunition for avalanche control in Little Cottonwood Canyon.

¹ Under 23 U.S.C. 313, FHWA has a Buy America requirement for manufactured products; however, FHWA has a standing waiver under 23 U.S.C. 313(b), known as the Manufactured Products General Waiver, which covers manufactured products that are not predominantly steel and iron. See 48 FR 53099 (Nov. 25, 1983).

² While the Build America, Buy America Act (BABA), included in the Infrastructure Investment and Jobs Act (also known as the "Bipartisan Infrastructure Law" (BIL)) (Pub. L. 117-58), sets out Buy America preferences for steel, iron, manufactured products, and construction materials, these preferences only apply to the extent that a domestic content procurement preference, as described in section 70914 of BABA, does not already apply to iron, steel, manufactured products, and construction materials. BIL section 70917(a)-(b). As FHWA has existing domestic content preferences for steel, iron, and manufactured products at 23 U.S.C. 313, the requirements under 23 U.S.C. 313 apply to steel, iron, and manufactured products instead of the requirements under BABA. As FHWA's existing Buy America requirement does not specifically cover construction materials, the Buy America preference under section 70914 of BABA applies for construction materials.

This is the only location in North America where live artillery is fired over inhabited buildings. The UDOT has committed to ending the use of the howitzer by 2025 and replacing it with RACS, which use remotely detonated explosives to mitigate avalanches and save lives. This project is to install 16 RACS using suspended explosive charges along SR-210 in Little Cottonwood Canyon to minimize safety concerns from the overhead fire of live artillery over inhabited structures.

Background on Waiver Request: The UDOT is part of the Transportation Avalanche Research Pool, which has identified three main types of RACS used in the United States: gas-delivered explosives, propelled explosive charges, and suspended explosive charges. The UDOT believes that the most appropriate products for this project based on the unique terrain in the deployment area are RACS that utilize suspended explosive charges. Prior to submitting a waiver request, UDOT identified only one domestic supplier of any type of RACS; however, that company uses gas-delivered explosives, and such a system is not viable for this project due to the extreme terrain, excessive rockfall, and extensive distance of the required gas line that would be needed to operate the system. The UDOT also used the National Institute of Standards and Technology's Manufacturing Extension Partnership Supplier Scouting service to seek out any domestic manufacturers of RACS, but no domestic alternatives were identified.

The UDOT thus requested a waiver for the tower, deployment box, and charges that are part of the RACS for 16 systems that will use suspended explosive charges.

In accordance with section 122 of Division F of the Consolidated Appropriations Act, 2024 (Pub. L. 118-42), section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244), and 23 U.S.C. 313(g), FHWA posted a notice of the waiver request on its website on April 10, 2024, soliciting public comment on the intent to issue a waiver of the waiver items for a 15-day period.³

Waiver Justification Summary

Comments to the Notice of Waiver Request: The FHWA received five comments in response to the notice of the waiver request. One commenter stated that FHWA's Buy America requirements are outdated and indicated that FHWA should grant the waiver.

³ <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=175>.

Another stated that FHWA should grant the waiver and argued that FHWA should not apply its Buy America requirements to predominantly steel and iron components.

Two other commenters provided information not relevant to the waiver request. One questioned the environmental impacts of RACS, which is not an issue within the scope of this waiver request.

Another commenter stated that the Office of Management and Budget (OMB) policy eliminated the need for the waiver request because OMB requirements apply to manufactured products, not just iron and steel. The FHWA's Buy America requirements with respect to manufactured products, however, differ from requirements applicable to other Federal Agencies under BABA, which was included as part of the BIL (Pub. L. 117-58). The FHWA has waived its statutory Buy America requirements as to all manufactured products that are not predominantly steel and iron; however, FHWA applies its Buy America requirements to predominantly iron and steel components of manufactured products, and such components must comply with FHWA's requirements that all iron and steel must be domestically manufactured. Although BABA requires that manufactured products be manufactured in the United States and the cost of the manufactured product's components that are mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the manufactured product, BABA does not specifically mandate that iron and steel components in particular must be domestically manufactured.⁴ See BIL section 70912(6)(B).

In other words, FHWA applies its own Buy America requirements to steel, iron, and manufactured products used on FHWA funded projects, not the standards for steel, iron, and manufactured products under BABA. See BIL section 70917(a)-(b). Accordingly, manufactured products used on FHWA funded projects are only compliant with Buy America if all of their predominantly steel and iron components are domestically

manufactured. Manufactured products that meet BABA's standards, being manufactured in the United States and having 55 percent of the components, by cost, be mined, produced, or manufactured in the United States, are not inherently compliant with FHWA's Buy America and may not necessarily be permanently incorporated into FHWA-funded projects.

Finally, the fifth commenter, representing the domestic supplier identified by UDOT as using gas-delivered explosives noted above, stated that the company was not consulted on the viability of its product to work in the project terrain and contested the statement from UDOT that its products are not a viable alternative for the project. When determining whether steel and iron materials or products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality pursuant to 23 U.S.C. 313(b)(2) and 23 CFR 635.410(c)(1)(ii), FHWA considers whether the recipient has used appropriate due diligence to identify domestic products or domestically available alternative products that meet the recipient's specifications. A comparable product that performs a similar function is not necessarily a domestic alternative; the product must also meet the recipient's specific requirements that are deemed necessary in order to achieve the performance objectives of the project. The FHWA's statutory requirements do not require recipients to change product specifications in order to utilize domestic products that do not meet the recipient's original specifications. Accordingly, as FHWA views this fifth commenter as arguing UDOT should modify their original specifications to accommodate their domestic product, FHWA does not believe that this commenter has demonstrated that they have a suitable domestic alternative.

In sum, no commenter provided information on potential domestic manufacturers of suspended explosive charge RACS. Thus, UDOT did not receive any new information indicating that the waiver items could be produced by domestic manufacturers from any of the commenters.

The FHWA believes that UDOT has made substantial efforts to find suitable Buy America-compliant waiver items that will safely and effectively serve the purpose of this project but that such products are unavailable.

Timing and Need for a Waiver: The waiver items are essential to achieving the goal of replacing the current use of live artillery with a safer remote-

activated system that can provide highway avalanche mitigation.

While UDOT did not request a waiver for the reinforced foundation of the RACS, as such foundation can be domestically manufactured, the waiver items are engineered to work together as a single system, and exchanging parts of the system would reduce the reliability and safety of the system. Accordingly, the waiver items at issue must be purchased and installed as a single system, and UDOT has not located any domestic manufacturers for the waiver items meeting the project's specifications, nor has any domestic manufacturer identified the ability to produce Buy America-compliant waiver items through the public comment process.

Executive Order 14005: Executive Order (E.O.) 14005, entitled "Ensuring the Future is Made in All of America by All of America's Workers," provides that Federal Agencies should, consistent with applicable law, maximize the use of goods, products, and materials produced in, and services offered in, the United States. 86 FR 7475 (Jan. 28, 2021). Based on the information contained in the waiver request from UDOT and the lack of responsive comments to the notice of waiver request, FHWA concludes that issuing a waiver is not inconsistent with E.O. 14005.

Finding and Request for Comments

Based on all the information available to the Agency, FHWA concludes that there are no Buy America-compliant waiver items meeting the project's specifications and is waiving its Buy America requirements for steel and iron set forth at 23 U.S.C. 313 and 23 CFR 635.410 for recipient purchases of 16 RACS using suspended explosive charges for avalanche highway mitigation in Little Cottonwood Canyon. For each RACS, this waiver will cover only: (i) the tower; (ii) the deployment box; and (iii) the charges (collectively "waiver items"). This waiver does not apply to other components of the RACS, such as reinforced foundations, which must be compliant with FHWA's Buy America requirements. In addition, this waiver does not cover additional charges purchased for the RACS.

The waiver is limited to applicable purchases by UDOT, UDOT's contractors, or subcontractors (of whatever tier) of the waiver items for the above mentioned project. The waiver does not apply to purchases for any other products or projects. This waiver would be effective from the effective date of the final waiver through the period of performance and closeout

⁴ To meet the requirement that 55 percent of components, by cost, be mined, produced, or manufactured in the United States for a manufactured product containing predominantly iron or steel components, a manufacturer may choose to domestically produce those components. This is different from FHWA's Buy America requirements, which mandate that all predominantly steel or iron components be domestically produced, regardless of the percent, by cost, of which they make up the manufactured product.

of FHWA's financial assistance for the project, which is estimated to be December 31, 2025.

The UDOT and its contractors and subcontractors involved in the procurement of the relevant components are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

In accordance with the provisions of section 117 of the SAFETEA-LU Technical Corrections Act of 2008, FHWA is providing this notice as its finding that a waiver of its Buy America requirements for steel and iron is appropriate. The FHWA invites public comment on this finding for an additional five days following the effective date of the finding. Comments may be submitted to FHWA's website via the link provided to the waiver page noted above.

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

Kristin R. White,

Acting Administrator, Federal Highway Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2024-0013]

National Transit Database: Proposed Reporting Changes and Clarifications for Report Years 2025 and 2026

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

ACTION: Notice, request for comments.

SUMMARY: This notice provides information on proposed changes and clarifications to the National Transit Database (NTD) reporting requirements. Some of the proposed NTD changes would take effect beginning in NTD report year (RY) 2025, while others would take effect in RY 2026.

DATES: Comments should be filed by December 30, 2024. FTA will consider comments received after that date to the extent practicable.

ADDRESSES: You may send comments, identified by docket number FTA-2024-0013, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov> and follow the online instructions for submitting comments.

- *Mail:* Send comments to Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey

Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Management Facility, U.S. Department of Transportation, at (202) 493-2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket Number (FTA-2024-0013) for this notice, at the beginning of your comments. If sent by mail, submit two copies of your comments.

Electronic Access and Filing: This document and all comments received may be viewed online through the Federal eRulemaking portal at <https://www.regulations.gov> or at the street address listed above. Electronic submission, retrieval help, and guidelines are available on the Federal eRulemaking portal website. The website is available 24 hours each day, 365 days a year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at <https://www.federalregister.gov>.

Privacy Act: Except as provided below, all comments received into the docket will be made public in their entirety. The comments will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You should not include information in your comment that you do not want to be made public. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at <https://www.transportation.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: Chelsea Champlin, National Transit Database Program Manager, FTA Office of Budget and Policy, 202-366-1651, Chelsea.champlin@dot.gov.

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A. Background and Overview

The National Transit Database (NTD) was established by Congress to be the Nation's primary source for information and statistics on the transit systems of the United States. Recipients and beneficiaries of Federal Transit Administration (FTA) grants under either the Urbanized Area Formula Program (49 U.S.C. 5307) or Rural Area Formula Program (49 U.S.C. 5311) are required by law to report to the NTD. FTA funding recipients that own, operate, or manage public transportation capital assets are required to provide more limited reports to the NTD regarding Transit Asset Management.

Pursuant to 49 U.S.C. 5334(k), FTA seeks public comment on seven (7) proposed NTD reporting changes and clarifications. These proposals are based on input from the transportation industry and FTA's assessment of geospatial data needs following the NTD's first annual data collection since implementing reporting changes required by the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58). The information below describes anticipated reporting impacts from each proposed change or clarification and the proposed effective date of each change. FTA seeks comments on the proposed changes and clarifications described below. All impacts or changes described below are proposed and subject to finalization in a future notice.

B. Additional Data Within Publicly Hosted General Transit Feed Specification (GTFS) Datasets

The Infrastructure Investment and Jobs Act amended 49 U.S.C. 5335(a) to require FTA to collect "geographic service area coverage" data through the NTD. As of Report Year (RY) 2023, FTA requires that reporters with fixed route modes create and maintain a public domain GTFS dataset that reflects their fixed route service. These changes were finalized through a **Federal Register** notice published on March 3, 2023 (88 FR 13497). Specifically, FTA requires agencies that operate fixed route service to maintain a GTFS feed and submit to the NTD a corresponding link or file containing their GTFS dataset. FTA requires that the GTFS file contain six underlying text files at a minimum, including trips.txt and stops.txt. A seventh set of files (shapes.txt and feed_info.txt) is optional under current requirements. GTFS ensures data consistency by establishing minimum