

FTA Issues Buy America Domestic Content Waiver for Vans, Minivans

In a *Federal Register* notice that was published on October 20, 2016, [link: <https://www.federalregister.gov/documents/2016/10/20/2016-25370/notice-of-buy-america-waiver-of-domestic-content-requirement-for-minivans-and-vans>] the Federal Transit Administration announced that its “Buy America” domestic content requirement is being waived for non-ADA-accessible vans and minivans through September 30, 2019, or until FTA determines this waiver is no longer necessary, whichever comes first.

What does this notice mean for public transportation providers?

It means that you may be able to use FTA funds to purchase Toyota Siennas or a few other models of standard-production minivans or vans without having to comply with the domestic content portion of FTA’s Buy America regulations. It’s important to note, though, that FTA is NOT waiving the “final assembly” aspect of its Buy America rules, which means the only allowable vans and minivans must have their final assembly in the US.

Does this waiver apply only to vehicles purchased for vanpool programs?

No, the waiver applies to all instances where entities are seeking to use FTA funds to purchase non-accessible vans or minivans, regardless of funding stream or operating mode.

Are there different requirements for FTA’s Section 5307, 5310, 5311 or 5339 grants?

No, FTA’s Buy America requirements, including this waiver, are uniform across all its funding programs. Note, though, that state DOTs and Section 5310-administering agencies often set additional policies and requirements for vehicle acquisitions under the programs they manage.

Does this waiver apply to ADA-compliant, accessible vans and minivans?

No, this waiver is ONLY for vans and minivans assembled in the US that are not accessible under DOT’s ADA accessibility regulations.

But when is it even allowable for FTA funds to be used for the purchase of vehicles that are not accessible?

Under the Americans with Disabilities Act, and as stated in DOT’s ADA regulations [link: <https://www.transit.dot.gov/ada>], it is possible to acquire vehicles for demand-response service, including vanpools, that are not accessible, but only if the operation, when viewed in its entirety, provides equivalent service to all passengers regardless of their disability status. So, it can be possible for some demand-response transit operations to have a mixture of accessible and non-accessible vehicles in their fleet, without violating the ADA.

What if a state DOT or other funding agency requires all vehicles its grantees purchase to be fully accessible?

Quite a few state DOTs require all the vehicles purchased by (or for) their Section 5311 subrecipients to be 100 percent accessible. Similarly, many Section 5310 administering agencies require all vehicles purchased with Section 5310 assistance to be 100 percent accessible. This waiver does not change or override any policies set by states or other funding agencies.

Can a van or minivan acquired under this waiver then be modified to become accessible under ADA guidelines?

That is a possibility, but should be approached with caution, if at all. Strictly speaking, the waiver allows the purchase of US-made non-accessible vans or minivans without having to satisfy the domestic content requirement, and is silent on any after-market modifications that are made to the vehicle, even if those modifications are to make the vehicle accessible. On the other hand, if it looks to FTA that a grantee is using an after-market modification to evade its Buy America requirement, that could become problematic.

Does this waiver apply only to the specific models of minivan cited in FTA's notice?

No, it applies to all US-made vans and minivans that do not comply with ADA accessibility guidelines. For illustrative purposes, FTA named the Toyota Sienna and some other specific models of van and minivan as likely to be able to satisfy the Buy America final assembly requirement, and for which the Buy America domestic content requirement is being waived.

Can vans or minivans acquired under this waiver be used in fixed-route service?

No. It continues to be a violation of the ADA to acquire vehicles for fixed-route transit service that are not accessible to individuals with disabilities, regardless of the Buy America status of the vehicle(s).

What about vehicles that are not acquired with FTA funds?

FTA's Buy America rules, and thus this waiver, apply only to vehicles purchased with FTA funds. The acquisition of vehicles from non-FTA sources, such as FHWA or HUD, may have their own unique requirements, but Buy America is a requirement specifically for FTA-funded vehicle procurements.

What if a transit agency is purchasing only one or two vehicles, for a total procurement of less than \$150,000?

As FTA recently reminded all interested parties in a September 16, 2016, "Dear Colleague" letter [link:

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Dear%20Colleague%20Letter%20re%20Small%20Purchase%20Waiver%209.16.2016.pdf>], Buy America requirements do not apply to small purchases, which are defined as procurements of less than \$150,000. Therefore, it may be possible to purchase a single vehicle, or maybe even a small number of vehicles, without having to heed Buy America requirements, provided the overall procurement remains less than \$150,000. Of course, all other conditions and requirements, including any requirements established by states or other funding agencies, continue to apply to small purchases.

Where can people get more information on this waiver or related questions?

In general, the first place any FTA grantee should turn for information on this or other FTA requirements is their FTA regional office. To learn more about FTA's Buy America rules and guidelines, visit the Buy America portion of FTA's website, at <https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america>. If you need to speak to a human being at FTA headquarters about Buy America, contact Cecelia Comito, FTA's Assistant Chief Counsel, by email (Cecelia.comito@dot.gov) or phone (202-366-2217).