

hazard area associated with the Minotaur I launch.

The FAA cross-waivers require the launch participants, including the U.S. Government and each customer, and their respective contractors and subcontractors, to waive and release claims against all the other parties to the waiver and agree to assume financial responsibility for property damage sustained by that party and for bodily injury or property damage sustained by the party's own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by their respective employees resulting from the licensed activity, regardless of fault. 14 CFR 440.17(b) and (c). Each party<sup>4</sup> to the cross-waiver must indemnify the other parties from claims by the indemnifying party's contractors and subcontractors if the indemnifying party fails to properly extend the requirements of the cross-waivers to its contractors and subcontractors. 14 CFR 440.17(d).

A comparison of each element shows that, although there are some differences, because Article 7 of the NASA CRADAs addressing liability and risk of loss and signed by each of the NASA-sponsored CubeSat operators is consistent with Congressional intent and the FAA's regulations, and relevant employees will not be present at the launch site, the FAA waives the requirement of 14 CFR 440.17 that NASA-sponsored CubeSat operators must sign a cross-waiver. Additionally, the FAA notes that because the only customers for the Minotaur I November 2013 launch are the U.S. Government, for which cross-waivers are not required, and the various NASA-sponsored CubeSat operators, for which the CRADAs provide waivers of liability, the only signatories to the FAA cross-waivers as required by 14 CFR 440.17 are the FAA, on behalf of the U.S. Government, and Orbital. Therefore, Orbital does not need to amend its cross-waivers to provide that signing customers waive claims against any other customer as defined by 14 CFR 440.3, as the FAA has previously required before granting a similar waiver.<sup>5</sup>

The FAA bases this determination of sufficient similarity between the FAA and NASA cross-waiver schemes on the reasons stated in the waiver the FAA published for Space Exploration

Technologies Corporation on October 16, 2012,<sup>6</sup> and for the reasons stated above.<sup>7</sup> The FAA finds that this waiver implicates no safety, national security or foreign policy issues. The waiver is consistent with the public interest goals of Chapter 509. Under 51 U.S.C. 50914, Congress determined that it was necessary to reduce the costs associated with insurance and litigation by requiring launch participants, including customers, to waive claims against each other. Because the CRADAs under 14 CFR part 1266 accomplish these goals by the same or similar means, the FAA finds this request in the public interest. The FAA grants the waiver with respect to the NASA-sponsored CubeSat operators in reliance on the representations Orbital made in its petition, and on the condition that no employees of NASA-sponsored CubeSat operators will be inside a hazard area associated with the Minotaur I launch.

Issued in Washington, DC, on November 15, 2013.

**Kenneth Wong,**

*Commercial Space Transportation, Licensing and Evaluation Division Manager.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Buy America Waiver Notification

**AGENCY:** Federal Highway Administration (FHWA), DOT.  
**ACTION:** Notice.

**SUMMARY:** This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic iron and steel products in CNG Compressor/Controller (1) for Kings County, CA: 2 Storage spheres for city of Exeter, CA: 1 CNG fuelling station for Newman, CA.

**DATES:** The effective date of the waiver is November 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366-1562, or via email at [gerald.yakowenko@dot.gov](mailto:gerald.yakowenko@dot.gov). For legal

<sup>6</sup> *Waiver of Requirement to Enter Into a Reciprocal Waiver of Claims Agreement With All Customers*, Notice of Waiver, 77 FR 63221 (Oct. 16, 2012).

<sup>7</sup> The FAA also notes that although its previous waiver cited above discussed NASA's Space Act Agreements rather than CRADAs, the waiver of liability language in both types of NASA contract has the same effect and therefore the FAA applies the same reasoning.

questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366-4928, or via email at [michael.harkins@dot.gov](mailto:michael.harkins@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 Printing Office's database at: <http://www.access.gpo.gov/nara>.

##### Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to use non-domestic CNG Compressor/Controller (1) for Kings County, CA: 2 Storage spheres for city of Exeter CA: 1 CNG fueling station for Newman, CA.

In accordance with Division A, section 122 of the "Consolidated and Further Continuing Appropriations Act, 2012" (Pub. L. 112-55), the FHWA published a notice of intent to issue a waiver on its Web site for non-domestic iron and steel products in CNG Compressor/Controller (1) for Kings County, CA: 2 Storage spheres for city of Exeter, CA: 1 CNG fueling station for Newman, CA (<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=91>) on September 3, 2013. The FHWA received no comments in response to the publication. During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers of the CNG Compressor/Controller (1) for Kings County, CA: 2 Storage spheres for city of Exeter, CA and 1 CNG fueling station for Newman, CA.

Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers of the CNG Compressor/Controller (1) for Kings County, CA: 2 Storage spheres for city of Exeter, CA: 1 CNG fueling station for Newman, CA.

<sup>4</sup> Indemnification by the U.S. Government is conditioned upon the passage of legislation. 51 U.S.C. 50915; 14 CFR 440.17(d).

<sup>5</sup> See *Waiver of Requirement to Enter Into a Reciprocal Waiver of Claims Agreement With All Customers for Orbital Sciences Corporation*, Notice of Waiver, 78 FR 57215, 57216 (Sept. 17, 2013).

In accordance with the provisions of section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. 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 the FHWA's Web site via the link provided to the California waiver page noted above.

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

Issued on: November 18, 2013.

**Victor M. Mendez,**

*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Buy America Waiver Notification

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice provides information regarding the FHWA's finding that a partial Buy America waiver is appropriate for the obligation of Federal-aid Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds for the purchase of 378—light, medium, and heavy duty plug-in battery electric and compressed natural gas vehicles by Chicago DOT.

**DATES:** The effective date of the waiver is November 26, 2013.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366-1562, or via email at [gerald.yakowenko@dot.gov](mailto:gerald.yakowenko@dot.gov). For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366-4928, or via email at [michael.harkins@dot.gov](mailto:michael.harkins@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:

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#### Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a partial Buy America waiver is appropriate for the obligation of Federal-aid CMAQ program funds for the purchase of 378—light, medium, and heavy duty plug-in battery electric and compressed natural gas vehicles by Chicago DOT.

In accordance with Division A, section 122 of the "Consolidated and Further Continuing Appropriations Act, 2012" (Pub. L. 112-55), the FHWA published a notice of intent to issue a waiver on its Web site for the 378—light, medium, and heavy duty plug-in battery electric and compressed natural gas vehicles (<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=92>) on September 5, 2013. The FHWA received no comments in response to the publication.

During the 15-day comment period, the FHWA conducted additional review but was unable to locate a domestic manufacturer that could meet a 100 percent domestic steel and iron content requirement. Based on all the information available to the Agency, the FHWA concludes that there are no domestic manufacturers that could meet a 100 percent domestic steel and iron content for light, medium, and heavy duty plug-in battery electric and compressed natural gas vehicles.

The FHWA has reevaluated the applicability of the Buy America requirement as it may apply to the purchase of the vehicles. The FHWA's Buy America requirement was initially established in 1983 when the acquisition of vehicles was not eligible for assistance under the Federal-aid highway program. As such, the FHWA's Buy America requirements were tailored to the types of products that are typically used in highway construction, which generally meet a 100 percent domestic steel and iron content requirement.

Vehicles, however, are not the types of products that were initially envisioned as being purchased with Federal-aid highway funds when Buy America was first enacted. In today's

global industry, vehicles are assembled with components that are made all over the world. The FHWA is not aware of any vehicle on the market that can claim to incorporate 100 percent domestic steel and iron content. For instance, the Chevy Volt, which was identified by many commenters in a November 21, 2011, **Federal Register** notice as being a car that is made in the United States, comprises only 40 percent United States and Canada content according to the window sticker ([http://www.cheersandgears.com/uploads/1298005091/med\\_gallery\\_51\\_113\\_449569.png](http://www.cheersandgears.com/uploads/1298005091/med_gallery_51_113_449569.png)). There is no indication of how much of this 40 percent United States/Canadian content is United States-made content. Thus, the FHWA does not believe that application of a domestic content standard should be applied to the purchase of vehicles. However, the FHWA believes that the vehicles should be assembled in the United States. Whenever a person discusses the manufacture of vehicles, the discussion typically refers to where the final assembly takes place. For instance, under a previous proposed waiver notification and comment process, several commenters urged that the waiver be denied because the Chevy Volt is made in the United States, the FHWA interprets these comments as referring to the assembly of the vehicle in Detroit since the Volt window sticker says that the United States/Canada parts content of the vehicle is only 40 percent. While the manufacture of steel and iron products that are typically used in highway construction (such as pipe, rebar, struts, and beams) generally refers to the various processes that go into actually making the entire product, the manufacture of vehicles typically refers to where the vehicle is assembled. Thus, given the inherent differences in the type of products that are typically used in highway construction and vehicles, we feel that simply waiving the Buy America requirement, which is based on the domestic content of the product, without any regard to where the vehicle is assembled would diminish the purpose of the Buy America requirement.

Therefore, while the FHWA has not located a vehicle that meets a 100 percent domestic iron and steel content requirement, the FHWA does not find that a complete waiver based on non-availability pursuant to 23 U.S.C. 313(b)(2) is appropriate. However, the FHWA also recognizes that at least a partial waiver is necessary in order to permit Chicago DOT to proceed with its project. The FHWA believes that a partial waiver that allows the Chicago