



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 29, 2022

OFFICE OF
AIR AND RADIATION

DECISION MEMORANDUM

SUBJECT: Public interest adjustment period waiver of the Build America, Buy America Act, for 2022 Clean School Bus Rebate Program; 2022 DERA State Grants; and 2022 DERA Tribal and Insular Area Request for Applications

FROM: Joseph Goffman
Principal Deputy Assistant Administrator

SUMMARY

The Build America, Buy America Act (“the Act”), enacted as part of the Infrastructure Investment and Jobs Act (IIJA) on November 15, 2021, provides for the application of domestic preference requirements to infrastructure projects funded by Federal financial assistance and includes requirements to standardize and simplify application of the Act in government contracts. The Act directs the Environmental Protection Agency (EPA) to enforce the requirements of the Act to the Clean School Bus (CSB) program. Additionally, EPA implements the Diesel Emission Reduction Act (DERA) program. EPA must ensure that, starting on May 14, 2022, all Federal financial assistance for infrastructure comply with the requirements of section 70914 of the Act. This means that EPA must include a Buy America preference in awards issued on or after May 14, 2022, even if Notices of Funding Opportunities for those awards did not include a Buy America preference.

Consistent with the OMB guidance M-22-11, EPA is issuing a brief, time-limited public interest adjustment period waiver applicable to certain electric charging infrastructure equipment to avoid undue increases in the time and cost of a project, and to allow recipients and EPA to transition to new rules and processes. This waiver will also allow EPA to work jointly with the Departments of Energy (DOE) and Transportation (DOT) to develop a common approach to applying Buy America provisions to vehicle charging and fueling infrastructure. Suppliers are encouraged to take steps now that will better enable EPA to shorten the transitional waiver or narrow its applicability to rapidly encourage domestic sourcing.

SUPPLEMENTARY INFORMATION

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act, [Public Law 117-58](#), which includes the Build America, Buy America Act (“the Act”). [Public Law 117-58](#), § 70901-52. By strengthening requirements for the use of iron, steel, manufactured products, and construction materials produced in the United States, the Act will bolster America's industrial base, protect national security, and support high-paying jobs.

IJA establishes the CSB program and provides \$5 billion over five years to replace existing school buses with zero-emission or clean school buses. School buses travel over three billion miles each year, providing the safest transportation to and from school for more than 25 million American children every day¹. However, diesel exhaust from these buses can contribute to air quality problems and has a negative impact on human health, especially for children, who have a faster breathing rate than adults and whose lungs are not yet fully developed. These pollutants cause health impacts as children tend to be more susceptible to impacts such as an increased risk of asthma and other respiratory illnesses. Separately, as discussed below, there is information showing that domestically manufactured EV charging infrastructure may not be available in sufficient quantities this year. Thus, in the absence of this public interest adjustment period waiver, the funding to support zero-emission vehicles could be delayed and our nation's children and communities across the United States, especially communities that have been historically underserved, will continue breathing harmful air.

IJA allows EPA to fund up to 100% of the cost of the replacement bus and associated charging and fueling infrastructure. The Agency has determined that vehicles and engines covered under the CSB and DERA programs are not covered under the Act. Therefore, this waiver only addresses infrastructure related to charging investments allowed under the program guides. The Agency is not aware of any issues associated with foreign dumped goods for EV infrastructure investments contemplated for the CSB or DERA programs. For the current 2022 CSB Rebates, EPA is only funding infrastructure for EV charging. Funding for this infrastructure is limited to a maximum of \$20,000 when rebates for electric school buses are provided at the maximum allocation of \$375,000 per bus and at lower rates when rebate amounts are less than the maximum. Overall, based on the planned CSB rebate total amount offered of \$500M, the infrastructure investment would be at most approximately five percent of the total rebate amount, and an even smaller percentage of the overall \$5 billion CSB funding pool.

The financial assistance to build necessary infrastructure to operate zero-emission school buses, specifically in underserved and rural areas, is critical to the success of the CSB program and meeting of Justice40 goals. Based on stakeholder feedback, EPA believes school districts in underserved and rural areas may not be able to arrange necessary funding for charging infrastructure to be able to operate zero-emission school buses without financial assistance. It is thus essential to provide funding for infrastructure as part of the CSB program.

¹ <http://digital.schoolbusfleet.com/publication/?m=65919&i=696463&p=40&ver=html5>

The Act requires each applicant to submit a waiver request per project. For the 2022 CSB Rebates, EPA anticipates receiving thousands of applications, the vast majority from school districts. School districts generally do not have the expertise and resources to conduct market research on the availability of domestically manufactured charging infrastructure that would comply with the requirements of the Act. The 2022 CSB Rebates program was designed to be as simple and straightforward as possible, thus requiring each applicant to apply for a waiver would likely deter many applicants, particularly those in underserved areas. This would significantly delay project implementation.

The CSB Rebates application period began on May 20, 2022 and will close on August 19, 2022. Gathering applications without clarity on the applicability of the Act presents challenges for EPA as well as for school districts resulting in confusion and will compromise the chance of successful implementation of the CSB program.

DERA provides funding to upgrade older, heavy-polluting pieces of diesel equipment with more modern replacements that meet the most up-to-date emission standards. EPA provides DERA funding through grants and rebates. DERA grantees and rebate recipients may use funding to purchase zero-emission technologies, including electric vehicle replacements. DERA program guidance allows grantees and rebate recipients to include eligible charging equipment as well, and historically some awards have gone to support charging equipment installation. EPA does not allow DERA funds to be used for fueling infrastructure.

Historically, the DERA program has not funded significant numbers of zero-emission projects, but EPA has noted increasing stakeholder interest in these types of opportunities. Charging infrastructure is an important component for a successful zero-emission project.

EPA distributed the 2022 DERA State Grants program guidance in late April and anticipates opening the 2022 DERA Tribal and Insular Area Grants Request for Applications in late July. EPA is applying an adjustment period waiver for these two DERA funding opportunities to allow time for the Agency to develop appropriate guidance for applicants. An adjustment period is needed due to the time required to do additional market research required to properly assess the state of the EV charging infrastructure market. Further, building the capacity to submit and review waiver requests for EV charging infrastructure on a project-by-project basis presents significant challenges for EPA as well as state, tribal and insular areas applicants. The majority of projects funded by both of these programs are typically conventional diesel engine replacement projects, with only a small subset being zero-emissions projects that include limited funding for charging equipment or other electric system infrastructure associated with idle reduction projects. Therefore, EPA does not anticipate significant impact of the application of this adjustment waiver to the DERA program.

Additionally, DERA is a Justice40 pilot program. EPA is committed to meeting and exceeding the Biden-Harris Administration's Justice40 goal that at least 40% of the benefits of certain government programs flow to disadvantaged communities. DERA will strive to meet this commitment and advance environmental justice and equity considerations into all aspects of our

work. Based on stakeholder feedback, EPA believes the financial assistance for charging infrastructure is necessary to support successful zero-emission grant applications for DERA awards, especially for projects in underserved areas; and that a public interest adjustment period waiver is needed to maximize their likelihood of success.

EPA is aware that there are some EV charging products in the market today that *may* meet the Buy America provisions spelled out in IIJA and the subsequent guidance from OMB. Based on discussions with some suppliers and other relevant information, we believe that more products meeting this standard will be coming to market in the next year and beyond. DOE's recent Request for Information on Buy America provisions for EV chargers showed that certain charging equipment manufacturers plan to open plants in the U.S. and increase production in 1-2 years to meet demand. Suppliers are encouraged to take steps now that will better enable EPA to shorten the adjustment period waiver or narrow its applicability to rapidly encourage domestic sourcing. Those steps include assessing the cost of components produced domestically and internationally, and actions to ensure that greater than 55% of the cost of those components are mined, produced, or manufactured in the United States. In addition, after the adjustment period waiver, EPA plans to award grants, rebates and contracts with a contingency that EV charging products meet the Buy America standards, and EPA will subsequently ensure that recipients comply with all the requirements applicable to them. The time-limited adjustment period waiver will allow EPA, DOT, and DOE to further develop market research and public information to provide future funding recipients additional information and choices when considering the scope of their funding applications. This will also allow EPA some additional time to put in place new guidance and technical assistance to address project waivers that may come as part of the CSB or DERA program funding solicitations in the future.

PUBLIC NOTICE

On May 20, 2022, EPA published a notice proposing to issue this adjustment period waiver and the comment period was open until June 7, 2022, more than 15 days as required by the OMB guidance. The Agency received 12 comments during the public comment period from a variety of stakeholders, including manufacturers, suppliers, steel workers union, public utility, regional government agency, and industry-backed coalition. All but one of them were supportive of the waiver. One commenter did not support issuing a waiver for the 2022 CSB and 2022 DERA programs, stating that the commenter is concerned by the breadth of the proposed waiver and the length of time given for public comments. The commenter also indicated that proposed waiver and short comment period could be perceived as preventing U.S. manufacturing workers from the chance to fully benefit from Federal Buy America policy.

After reviewing these comments, EPA concludes that the information provided to EPA generally supports the idea that additional time is needed for potential funding applicants, charging equipment providers, and EPA to be prepared to order, produce and fund equipment that meets the program's Buy America goals. This waiver will also allow EPA to work jointly with DOE and DOT to develop a common approach to applying Buy America provisions to vehicle charging and fueling infrastructure.

FINDING

Based on the above information and the stakeholders' comments received during public notice period, EPA hereby finds that this waiver is in the public interest and grants a program waiver of the requirements of section 70914(a) of the IIJA (Build America, Buy America), pursuant to Section 70914(b)(1), for the 2022 Clean School Bus Rebates, the 2022 DERA State Grants, and the 2022 DERA Tribal and Insular Area Grants. This waiver will allow recipients and EPA to transition to new rules and processes.

If you have any questions concerning the contents of this memorandum, please contact Joydeb Majumder at Majumder.Joydeb@epa.gov.