**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**[Docket No. NHTSA – 2015-0007]**

**Notice of Buy America Waiver**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of Buy America Waivers.

**SUMMARY:** This notice provides NHTSA's finding with respect to three requests from the North Carolina Department of Transportation, Governor's Highway Safety Program (NCGHSP) to waive the Buy America requirement. NHTSA finds that a non-availability waiver of the Buy America requirement is inappropriate for the purchase of seven different models of child safety seats because there are comparable products produced in the United States. In addition, NHTSA finds that a non-availability waiver is appropriate for NCGHSP to purchase e-citation printers, and HP printer cartridges and imaging drums because there are no comparable products produced domestically.

**DATES:** The effective date of this waiver is **[INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].** Written comments regarding this notice may be submitted to NHTSA and must be received on or before: **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** Written comments may be submitted using any one of the following methods:

- **Mail**: Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

- **Fax:** Written comments may be faxed to (202) 493-2251.
- **Internet:** To submit comments electronically, go to the Federal regulations website at http://www.regulations.gov. Follow the online instructions for submitting comments.
- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

Instructions**:** All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to http://www.regulations.gov, including any personal information provided. You may also call the Docket at 202-366-9324.

**FOR FURTHER INFORMATION CONTACT:**

For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202-366-0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202-366-5263). You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

**SUPPLEMENTARY INFORMATION:**

This notice provides NHTSA's finding that a waiver of the Buy America requirements, 23 U.S.C. 313, is not appropriate for NCGHSP to purchase seven different models of child safety seats using grant funds authorized under 23 U.S.C. 402. This notice also provides NHTSA's finding that a non-availability waiver is appropriate for the purchase of e-citation printers, and HP printer cartridges and imaging drums using grant funds authorized under sections 23 U.S.C. 405(c) and 402, respectively.

Section 402 funds are available for use by State Highway Safety Programs that, among other things, encourage the proper use of occupant protection devices, including child restraint systems. 23 U.S.C. 402(a). Section 405(c) funds are available for use by State highway safety programs to support the development and implementation of effective State programs that, among other things, improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of State traffic safety data. 23 U.S.C. 405(c)(1).

Buy America provides that NHTSA "shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States." 23 U.S.C. 313. However, NHTSA may waive those requirements if (1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent. 23 U.S.C. 313(b).

NCGHSP seeks waivers to use Federal highway safety grant funds to purchase (1) seven different models of child safety seats for use in its Child Passenger Safety Program;[1] (2) e-citation printers for use by local police officers; and (3) Hewlett-Packard(HP) 130A LaserJet Toner Cartridges and HP 126A LaserJet Imaging Drum CE314A for existing printers used by occupant protection program staff in their daily activities. In this notice, we first address the child safety seats, then the e-citation printers, and lastly the HP cartridges and imaging drums.

[1] NCGHSP requests to purchase the following models of child safety seats: Baby Trend Inertia, Chicco Keyfit 30, Cybex Aton Q, Graco HeadWise 70, Graco Nautilus, Graco Affix, and Evenflo Rightfit Booster.

NCGHSP seeks a waiver to use Federal highway safety grant funds to purchase various models of foreign made car seats in its Child Passenger Safety (CPS) program to train prospective and new technicians. NCGHSP states that it is unable to identify any comparable domestic made car seats to use in its CPS certification and renewal training classes. However, NHTSA conducted an assessment and identified comparable American manufactured car seats that could be used to fulfill the purpose of NCGHSP's CPS certification and renewal training classes. Consequently, as explained below, NHTSA has determined that a waiver to purchase these foreign made car seats is inappropriate.

NCGHSP states the purpose of the CPS certification and renewal training classes is to offer CPS technicians and prospective technicians the opportunity for hands-on training of a wide variety of child safety seats and booster seats. Based on their request, NCGHSP seeks a Buy America waiver to purchase various foreign-made car seat models to perform car seat training for CPS technicians and prospective technicians. In general, the car seats that NCGHSP seeks to purchase are categorized into four classes of seats: (1) rear-facing only seats, (2) convertible seats, (3) combination seats, and (4) booster seats. NHTSA found that both Britax and Dorel manufacture seats in all four requested classes in the United States. Based on this information, NCGHSP has not demonstrated that it meets the Buy America waiver requirements to purchase foreign-made child safety car seats to use in its CPS certification and renewal training classes.

NCGHSP states that each of the seven child seats has a feature that is not found on domestically produced car seats or the seat is popular with consumers. NHTSA recognizes that there are dozens of different car seat models in class of child restraints and that some domestic car seats may lack similar features available in the car seat models requested by North Carolina,

but these features are marketing based features that have little overall impact on the functionality of the seats. Thus, even without the features of the car seats that NCGHSP seeks, the overall function of domestic made seats fulfill the purpose for the CPS certification and renewal training classes. The purpose of these classes is to provide the basic knowledge and technical skills of the correct use and installation of car restraints (i.e. rear facing, convertibles, forward facing), booster seats, and seat belts necessary to certify technicians to conduct safety inspection stations and provide basic community education. With such a large variety of car seats in the market, and with marketing features to distinguish a restraint from competitors, the CPS training classes must provide basic training that is common to all seats. A large number of domestically produced car seats are available for this purpose. Since comparable models of the requested classes of car seats are produced domestically, NCGHSP's Buy America waiver is denied. NHTSA invites public comment on this conclusion.

NCGHSP also seeks a waiver to purchase mobile printers to assist North Carolina law enforcement agencies in participating in North Carolina's state-wide e-citation program. North Carolina's e-citation program is an integrated state-wide system that permits data obtained from by an officer during a traffic stop to be available instantaneously in the state court system. Following state procurement procedures, NCGHSP opened a publicly advertised bid for two types of e-citation printers: (1) inkjet printer and (2) thermal printer. None of the bids received offered a printer that was produced in the United States. The specifications NCGHSP requires for the inkjet printers are as follows: print resolution of 600 DPI Black and 4800 x 1200 DPI color; print speed of 22 ppm Black and 18 ppm color; compatible with Windows; Borderless printing (up to 4 x 6 in); USB 2.0 connectivity; and Bluetooth capability. The specifications that NCGHSP requires for thermal printers are as follows: print resolution of 300 DPI; print speed of

6 ppm; compatible with Windows; must be able to print 4" thermal roll paper and and 8.5" sheet feed thermal paper; product weight of 1.1 lbs; USB 2.0 connectivity; and Bluetooth capability.

NHTSA conducted a market analysis that did not locate any comparable American manufactured e-citation printers that are compatible with North Carolina's state-wide e-citation program. NHTSA was able to identify the FieldPro Series, a direct thermal mobile printer manufactured in the United States by Printek, Inc.[2] However, it does not appear that the FieldPro Series meets the specifications required by North Carolina. The FieldPro Series printer is unable to print 8.5" sheet feed thermal paper; it prints at 2.8 ips and at a resolution of 203 dps. Since the FieldPro Series printer does not meet the specifications required by NCGHSP, NHTSA has determined that there are no comparable products manufactured domestically. Therefore, a Buy America waiver is appropriate since Printek's FieldPro Series does not not meet the specification required by NCGHSP for its e-citation program. NHTSA invites public comment on this conclusion.

Lastly, NCGHSP seeks a waiver to purchase HP printer cartridges and imaging drums for existing HP printers. The State intends to use the printer cartridges and imaging drums in the Injury Prevention section of its Buckle Up Kids/Safe Kids NC program. The requested equipment will be used to print outreach and educational materials for the program. NCGHSP states that only HP cartridges and imaging drums should be used in the program's HP printers because equipment produced by other manufacturers may cause degradation or quality issues when used in place of HP products. It is unable to identify any printer cartridges and imaging drums for existing HP printers that meet the Buy America requirements. The State noted that HP is a large, multinational corporation with facilities, including manufacturing facilities, world-wide. NCGHSP is unable to identify the location of the facilities that produce the replacement

[2] See http://www.printek.com/index.php/mobile/about.

HP printer cartridges and imaging drums. NHTSA conducted similar assessments and cannot confirm that HP printer cartridges and imaging drums are produced domestically and is not aware of any comparable printer cartridges and imaging drums produced in the United States. Therefore, the Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant waivers from the Buy America requirements to NCGHSP in order for it to use Federal highway safety grant funds to purchase e-citation printers and HP printer cartridges and imaging drums. These waivers apply to North Carolina and all other States seeking to use section 405(c) funds to purchase e-citation printers meeting the specifications described above and section 402 funds for HP printer cartridges and imaging drums for the purposes mentioned herein. These waivers will continue through fiscal year 2015 and will allow the purchase of these items as required for North Carolina's Governor's Highway Safety Program. Accordingly, these waivers will expire at the conclusion of fiscal year 2015 (September 30, 2015). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirement is appropriate.

NHTSA also determines that it is inappropriate to grant a waiver from the Buy America requirement for NCGHSP to use Federal highway safety grant funds to purchase various models of car seats in its Child Passenger Safety Program.

Written comments on these findings may be submitted through any of the methods discussed above. NHTSA may reconsider these findings, if through comment, it learns of additional relevant information regarding its decisions related to NCGHSP's waiver requests.

These findings should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

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

Issued in Washington, DC under authority delegated in 49 CFR part 1.95.

O. Kevin Vincent,
Chief Counsel.

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