ZETA | ZERO EMISSION TRANSPORTATION ASSOCIATION

September 30, 2022

Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Ave. SE, W12-140
Washington, DC 20590-0001

SUBMITTED VIA https:// www.regulations.gov
Docket No. FHWA-2022-0023
ELECTRONIC MAIL TO: regulations.gov

Re: Notice of Proposed Waiver of Buy America Requirements for Electric Vehicle Chargers

Please find the Zero Emission Transportation Association's (ZETA) response to the Department of Transportation (DOT), FHWA-2022-0023: Development of Guidance for Electric Vehicle Charging Infrastructure Deployment.

The Zero Emission Transportation Association is an industry-backed coalition of member companies spanning the entire electric vehicle (EV) supply chain. Together with our members, we advocate for 100% EV sales by 2030 and are committed to enacting policies that drive EV adoption, create hundreds of thousands of jobs, drastically improve public health, and significantly reduce carbon pollution.

The Infrastructure and Investment Jobs Act (IIJA) allocates $5 billion to establish the National EV Infrastructure Formula Program, which provides funds to states to create a national EV charger network. The IIJA also provides $2.5 billion over five years for the Charging and Fueling Infrastructure Program, a competitive grant program that will assist with deploying EV charging and alternative fuel infrastructure. Paired with the recent passage of the Inflation Reduction Act, these actions will provide further opportunity to produce widespread EVSE deployment and are consistent with the Biden-Harris EV Charging Plan and its goal to install a network of 500,000 EV chargers across the country.

We commend the Administration for implementing our request for an interim waiver from FHWA's Request For Information earlier this year:

"Providing an interim waiver will give EVSE manufacturers time to respond to the IIJA's new domestic content requirements. It would also allow FHWA to establish a clear set of rules for EVSE manufacturers to follow in order to comply with the Buy America Act and the IIJA without undermining the President's decarbonization goals."

Whether industry expects its production rates and capacity for chargers to be consistent with the proposed schedule.

ZETA has encouraged its member companies to respond to this question independently but notes that a data-driven waiver timeline is key to ensuring that charging deployment is not delayed as onshoring activities begin but are not yet at scale.

How the proposed schedule or alternative dates impact installation schedules in the field.

ZETA has encouraged its member companies to respond to this question independently.

Factors that would be relevant to considering adjustments to the dates of the waiver's phases.

ZETA has encouraged its member companies to respond to this question independently.

Whether to use the installation date of the EV charger or some other date as the effective date for the waiver and the dates for the phase-out schedule of the waiver.

ZETA asks that FHWA consider adjusting the effective dates for the waivers from installation date to ship date to the project location. To prevent a situation where non-domestic equipment is held in inventory for multiple years and used in the program, equipment shipped in 2022 (as denoted on the equipment's name plate) must be installed within 120 days of shipment. Projects can sometimes experience unplanned delays due to a variety of factors, like inclement weather, which in turn can impact the date that an EV charger can be installed at a project location or site. FHWA should provide applicants with some flexibility to account for the realities associated with complex projects to install EV chargers. One way to provide that flexibility is to change the effective date to the date that a charger is shipped to the project location or to a storage facility where it awaits installation.

Comment regarding the reliability of chargers, including new and custom chargers designed to comply with domestic content procurement preferences; cost competitiveness of chargers; production rates and capacity of chargers; and timing of delivery upon order or purchase of chargers.

In addition to charger supply, we recognize the complexity of the global supply chain. If the supply of parts is limited, it could be impossible to source replacement parts in time to hit the NEVI program's 97% uptime requirement. Our members request further clarification from FHWA regarding how it will treat subcomponents. ZETA's understanding is that the proposed rule only requires that components exceeding 55% of the total cost of the end product be produced in the U.S. This is only achievable if subcomponents can be sourced internationally. Many integral subcomponents and parts used in EV charging stations are not available in the US in sufficient quantity, quality, or at a reasonable price. Similarly, we ask that FHWA confirm that spare and replacement subcomponents and parts may also be sourced internationally. Applying domestic content requirements at the subcomponent level could force companies to significantly redesign their products, requiring new vendor and component audits and additional product recertification. These

processes are lengthy and divert time, resources, and revenues away from EVSE production and deployment. It is critical that FHWA does not underestimate the time required to recertify production processes and EV charging products for safety specifications (e.g. UL certifications are required for all charging stations).

Accordingly, ZETA recommends that domestic content requirements remain at the component level.

FHWA requests comment on whether EV chargers discussed in response to other questions in the notice would meet the proposed NEVI requirements for OSHA and Energy Star certifications.

ZETA has encouraged its member companies to respond to this question independently.

Whether and how to apply its existing Buy America requirement for iron and steel to any specific predominantly steel and iron EV charger components.

In ZETA's RFI response from earlier this year, our membership provided a detailed explanation:

"Since 2012, FHWA has interpreted the 1983 manufactured products exemption created under its Buy America authority to cover goods not made predominantly of steel and/or iron. As a manufactured good that does not rely heavily on either of those metals, EV chargers have historically qualified for this waiver."

ZETA's membership upholds its consensus on these findings. Additionally, ZETA believes that EV chargers should remain exempt from iron and steel domestic content requirements under the proposed waiver.

ZETA recognizes that some components or subcomponents of EVSE may contain iron and steel. However, the value of iron and steel contained in EVSE is not a significant amount compared to the total cost of the chargers. However, the imposition of domestic content requirements for steel and iron found in EVSE *would* create additional potential roadblocks to delivery and deployment of a network of EV charging infrastructure, as any disruption to availability or affordability of domestic iron and steel could bring EVSE manufacturers, and their related projects that chargers will be part of, to a standstill.

Unlike under the existing manufactured products general waiver (where no other domestic assembly or content rules would apply), the proposed waiver's final assembly requirement and 55% cost of components threshold provide significant domestic manufacturing and jobs support while indirectly benefiting EVSE manufacturers that utilize domestic iron and steel. For this reason, ZETA strongly opposes extending Buy America requirements to any specific predominantly steel and iron EV charging components.

Information supporting the reliable availability of steel and iron components which are capable of complying with FHWA's existing Buy America policy:

Definitions

In its consideration of subsequent guidance and waiver procedures, ZETA urges consideration of also adopting definitions stated in FTA guidance, "Buy American Requirements; End Product Analysis and Waiver Procedures," in the following matters:

End Product:

49 CFR §661.3; any vehicle, structure, product, article, material, supply, or system, which directly incorporates constituent components at the final assembly location, that is acquired for public use under a federally funded third-party contract, and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s).

System:

49 CFR §661.3; means a machine, product, or device, or a combination of such equipment, consisting of individual components, whether separate or interconnected by piping, transmission devices, electrical cables or circuitry, or by other devices, which are intended to contribute together to a clearly defined function. Factors to consider in determining whether a system constitutes an end product include: Whether performance warranties apply to an integrated system (regardless of whether components are separately warrantied); whether products perform on an integrated basis with other products in a system, or are operated independently of associated products in the system; or whether transit agencies routinely procure a product separately (other than as replacement or spare parts).

Applicability Beyond the Charger:

The waiver currently applies not only to the chargers but also to components, systems, and technologies essential to their operation—including items like telecommunication technology that may not be produced domestically. For medium- and heavy-duty charging stations, which will require more hardware, this applicability beyond the charger could affect the economics of installing charging sites. ZETA recommends that FHWA avoids applying these rules broadly to ancillary elements of a project related to the EV charger. Often, these projects are much less influenced by the NEVI and other DOT sourcing rules, and applying FHWA's rules will likely hinder project delivery. The current proposal creates specific Buy America rules for telecommunications equipment devices used for an EV charger project. Creating separate rules from rules that exist for other infrastructure technology is likely to cause confusion amongst manufacturers, state DOTs, and host-site operators; in turn, this will be more likely to halt or delay a critical EV charging deployment project rather than spur domestic manufacturing of high quality devices.

Many of the electrical distribution infrastructure components that are directly related to EV charging infrastructure and are essential to its operation are currently subject to the FHWA's long-standing manufactured products waiver. We expect that a decision to curtail the waiver by subjecting these

components to new Buy America requirements could cause significant delays in NEVI program implementation. Some of this delay will arise from a need to verify Buy America compliance for each component while also ensuring the security and reliability of the electric grid. In this case, it would be critical for DOE to ensure that the waiver is broad enough to include the directly-related distribution infrastructure components.

Furthermore, setting project-specific domestic content rules for solar panels and other renewable energy components of an EV charging project risks total removal of renewable energy on an EV charger.. The existence of U.S.-made solar panels will not be determined by the minimal quantity purchased using Title 23 funds. On the contrary, FHWA should strongly encourage including on-site renewable energy generation in EV charging projects wherever possible to ensure that EVs receive sustainable power.

Conclusion

As EV adoption continues to grow in the U.S., EVSE deployment will present an economic growth opportunity and public need for communities across the country. Buy America requirements can encourage domestic EVSE production and incentivize the development of a domestic supplier ecosystem and workforce. We encourage FHWA to prioritize the feasibility of U.S. EVSE providers to comply with Buy America component requirements based on the current and near-term manufacturing landscape. ZETA supports incentivizing U.S. production while reasonably meeting the EV industry where it stands. This will ensure the successful implementation of the IIJA, IRA tax incentives, and the President's goal of deploying 500,000 public EV chargers.

Sincerely,

Joseph Britton
Executive Director
Zero Emission Transportation Association