

Federal Highway Administration's Proposed Discontinuation of the Buy America General Waiver for Manufactured Products

Docket Number: FHWA-2023-0037

Agency: Federal Highway Administration (FHWA), Department of Transportation.

Action: Notice of proposed rulemaking; request for comments.

Comment Deadline: May 13, 2024.

Federal Register Page: [Here](#)

Associated RFI on the Use of Manufactured Products in Highway Projects: [Here](#)

Resources:

- [FHWA Buy America Homepage](#)
- [Buy America Overview Presentation by FHWA](#) - August 2022
- [Buy America Waiver for EVSE](#) - February 2023
- [Buy America FAQs for EV Charging](#) - July 2023
- [General BABA FAQs for Federally-Funded Projects](#) - January 2024

Overview:

FHWA is proposing to discontinue its general waiver of Buy America requirements for manufactured products and in doing so require recipients of FHWA funding to start applying Buy America requirements to manufactured products. FHWA is also proposing standards for applying Buy America to manufactured products should the proposed discontinuation be finalized. The Buy America general waiver for manufactured products is separate from the Buy America waiver specific for EVSE, which was published in February 2023 and has a separate implementation timeline.

Fast facts on the Existing Manufactured Products General Waiver:

- In place since 1983.
- Applies to manufactured products permanently incorporated into FHWA-funded projects.
- Predominantly (>50% of total cost) iron or steel manufactured products and predominantly iron or steel components of manufactured products were exempted from the waiver and remain subject to Buy America requirements.
- FHWA removed EV chargers from the manufactured products general waiver in February 2023 and created a separate Buy America waiver specific to EV chargers with a separate implementation timeline.

Intersection of Buy America Manufactured Products General Waiver and Buy America EVSE Waiver

- FHWA notes that it does not intend for these proposed standards to supplant current FHWA waivers that cover specific manufactured products, such as EVSE.
- For purposes of Buy America implementation, FHWA defines an EV charger as: “the EV charger unit itself and the equipment contained inside it.” FHWA considers this to include the charging port and the cable and connector that plugs into the vehicle. [See FAQ #2](#).
 - This definition does not include associated equipment external to the EV charger. FHWA considers, for example, energy storage systems and transformers to fall within this exclusion. Associated external EV charger equipment and an EV charger’s predominantly steel or iron housing (also known as its cabinet or enclosure) must comply with FHWA’s existing Buy America requirements.
- In essence, any manufactured product not covered by the EVSE waiver is likely covered under the manufactured products general waiver, unless the product or component is predominantly iron or steel.

Proposed Discontinuation of the Manufactured Products General Waiver and Future Standards

Considering the stated policy of the Biden Administration, most recently reiterated in the President’s March 2024 State of the Union address, the decision to discontinue the waiver has likely already been made. That being said, this NPRM provides an opportunity to comment on implementation of Buy America requirements for manufactured products in a post-waiver paradigm including implementation timeline, key definitions, and other administrative considerations.

Key Definitions

The proposed rule defines a series of key terms in the Buy America context, largely aligned with BABA within the Bipartisan Infrastructure Law:

- *Component* means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into a manufactured product or, where applicable, an iron or steel product.
- *Excluded materials* means *Section 70917(c) materials* as defined in 2 CFR 184.3.
- *Iron or steel products* means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.
- *Manufactured products* means articles, materials, or supplies that have been processed into a specific form and shape, or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified as an iron or steel product, an excluded material, or other product category as specified by law or in 2 CFR part 184, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product may include components that are iron or steel products, excluded materials, or other product categories as specified by law or in 2 CFR part 184. Mixtures of concrete or

asphalt delivered to a job site without final form for incorporation into a project are not a manufactured product.

- *Manufacturer*, in the case of manufactured products, means the entity that performs the final manufacturing process that produces a manufactured product.
- *Predominantly of iron or steel or a combination of both* means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.
- *Produced in the United States*, in the case of manufactured products, means:
 - The product was manufactured in the United States; and
 - The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product.

Open Questions

- Transition period - The proposal does not include a specific phase-in timeline for the reinstatement of the Buy America requirements. However, FHWA requests comments on the need for one and potential timeline.
 - *ZETA Note:* FHWA issued a Buy America [waiver for construction materials](#) in May 2022 that included a 6-month transition period. The Buy America [waiver for EVSE](#) had a transition period of about 16 months.
- Buffer period for projects under development - FHWA requests comment on whether there should be a buffer period for certain projects that are in development that have not had Federal awards obligated or authorized but have relied on the Manufactured Products General Waiver.
- Administrative burden - FHWA is not prescribing any specific method of compliance. Instead, they request comments on any specific provisions that FHWA should consider in easing the administrative burden in demonstrating compliance with the requirements.