



ZERO EMISSION  
TRANSPORTATION  
ASSOCIATION

May 13, 2024

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

**RE: Docket No. FHWA-2023-0037**  
**Buy America Requirements for Manufactured Products**  
*Submitted via Rulemaking Portal: <http://www.regulations.gov>.*

The Zero Emission Transportation Association (ZETA) is an industry-backed coalition of member companies advocating for 100% electric vehicle (EV) sales. ZETA is committed to supporting policies that drive EV adoption, create hundreds of thousands of jobs, dramatically improve public health, and significantly reduce emissions. Our coalition spans the entire EV supply chain, encompassing critical minerals developers, vehicle and charging manufacturers, charging network operators, electricity providers, and battery manufacturers and recyclers, among others.

We thank the Federal Highway Administration (FHWA) for the opportunity to comment on its proposal to discontinue its general waiver of Buy America requirements for manufactured products,<sup>1</sup> and we have also encouraged our individual member companies to submit specific information to help inform FHWA's decision making. We urge FHWA to ensure that its application of Buy America requirements is consistent with its sector-specific implementation of Buy America requirements and with those of other relevant federal agencies. As discussed further, we also urge FHWA to consider a phased-in implementation time to limit the project cost and timing impacts from the imposition of new Buy America requirements. ZETA looks forward to continuing to engage with FHWA on this topic to bring forward perspectives representing the entire EV supply chain.

As EV adoption continues to grow in the United States, FHWA investments will present economic growth and public service opportunities for communities across the country. In addition, FHWA Buy America requirements will encourage domestic production and incentivize the development of a domestic supplier ecosystem and workforce—key policy objectives of our organization. ZETA and its members stand ready to help FHWA implement a strategy that meets statutory intent without restraining the momentum behind transportation electrification and decarbonization. We also encourage FHWA and the Department of Transportation to leverage its

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<sup>1</sup> 89 FR 17789 (March 12, 2024)

existing loan and grant authorities to help ensure a smooth transition to a post-Buy America manufactured products paradigm and help support domestic sourcing and product availability.

### **FHWA Buy America Implementation Should Be Mindful of Situations Outside of Funding Recipients' Control so as Not to Jeopardize Timely and Cost-Effective Achievement of Funding Program Objectives**

As the long-overdue rebuilding of domestic manufacturing capacity continues, ZETA notes that many components critical to transportation electrification may still only be available from a narrow set of FHWA Buy America-compliant suppliers. Additionally, new efficiency standards for key products essential to transportation electrification are pressuring manufacturers to source larger quantities of compliant manufactured products, such as electrical distribution transformers that may be covered under FHWA-funded programs. Coupled with the imposition of Buy America requirements for manufactured products, these pressures could ultimately increase product costs, delay product delivery, and slow project schedules.

Some supply chain segments remain exposed to sole- or non-diverse supplier options, meaning any supply disruption—such as the recent unexpected closure of the Magnitude 7 Metals aluminum smelter in Marston, Missouri<sup>2</sup>—could make FHWA Buy America compliance significantly more difficult due to factors well outside funding recipients' control or ability to anticipate. For electric utilities, for example, regular work can involve a brief interruption in critical services to customers. Delaying construction and/or repairs because FHWA Buy America-compliant products are not on hand or most readily available could endanger the most vulnerable members of a community. Similarly, unanticipated and/or unforeseeable events can occur during construction, where on-the-spot adjustments and time constraints may not grant companies the benefit of pre-ordering FHWA Buy America-compliant materials. While companies may keep an inventory of many sizes and varieties of emergency materials for these situations, those materials may not come with Buy America certifications. Accordingly, final FHWA Buy America requirements should be flexible and considerate of situations like these so as not to jeopardize the timely and cost-effective completion of the funding programs' objectives.

We also recommend FHWA establish a standardized process and set of forms, including clear deadlines, for funding recipients to request waivers for significantly increased costs and unavailability of materials, products, and components. As FHWA Buy America requirements for manufactured products take effect, situations that warrant a waiver request from either states, FHWA regional offices, or FHWA headquarters are likely to arise. ZETA urges FHWA to

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<sup>2</sup> <https://missouriindependent.com/2024/01/25/one-of-nations-only-aluminum-smelters-set-to-close-in-missouri-bootheel/>

develop a timely, predictable process for requesting a waiver that is applied consistently across all relevant agencies.

### **FHWA Should Finalize a Delayed Effective Date of Minimum 12-Months for All Manufactured Products and Minimum 24-Months for All Electrical Distribution Products**

We request a transitional, phased-in implementation timeline consistent with past FHWA practice and most recently articulated in FHWA's temporary Buy America waivers for Electric Vehicle Supply Equipment<sup>3</sup> (EVSE) and for Construction Materials,<sup>4</sup> which have phase-in timelines of 16 months and 6 months, respectively. Specifically, we request a minimum 12-month phase-in period for all manufactured products and a minimum 24-month phase-in period for electrical distribution products<sup>5</sup> in recognition of the ongoing supply chain pressures to source these products domestically. While many of the products used in deploying an EV charging site are covered by the FHWA temporary Buy America waiver for EVSE, other products essential to deploying EV charging are covered under the existing FHWA manufactured products waiver but may warrant product-specific Buy America waivers. In the interest of providing certainty for funding applicants, we encourage FHWA to sequence the implementation of its final Buy America requirements for manufactured products to occur after the public solicitation and FHWA determination on the need for any manufactured product-specific waivers.

We also support the concept of grandfathering projects that are in development and have relied on the manufactured products general waiver in their funding applications to FHWA or states but have not yet had awards obligated or authorized. Some FHWA funding programs, such as the National Electric Vehicle Infrastructure (NEVI) program, involve competitive bid solicitations where price can be a major factor in award selection. Any changes to FHWA's Buy America requirements for manufactured products should be mindful of this and should avoid impacting pricing during application review periods, which could delay NEVI deployments—especially if those solicitations need to be reopened.

ZETA also requests clarity on an apparent discrepancy between FHWA's categorical exclusion<sup>6</sup> for EV chargers under the National Environmental Policy Act (NEPA) and the proposed discontinuation of the FHWA Buy America manufactured products waiver. Our understanding is that, if finalized, the discontinuation would require all products used within the scope of a NEPA project to comply with FHWA Buy America requirements so long as any portion of the project was funded using FHWA funds, despite the NEPA categorical exclusion in place for EV chargers. If our understanding is indeed correct, a scenario could be created where a funding-recipient may need to seek a NEPA determination on the project scope, even though a

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<sup>3</sup> 88 FR 10619 (February 21, 2023)

<sup>4</sup> 87 FR 31931 (May 25, 2022)

<sup>5</sup> Including but not limited to distribution transformers and electrical switchgear.

<sup>6</sup> 88 FR 64972 (September 20, 2023)

categorical exclusion is in place, to determine the applicability of FHWA Buy America requirements. As such, we request clarity on the interaction between the implementation of FHWA Buy America requirements writ large, NEPA, and existing (and potential future) categorical exclusions. The implications for the NEVI and Charging and Fueling Infrastructure (CFI) programs could be significant and contribute to longer project delivery timelines and increased project costs, ultimately limiting the effectiveness of these critical programs and jeopardizing President Biden’s goal of deploying 500,000 EV chargers by 2030.<sup>7</sup> In providing clarity, ZETA recommends that FHWA projects receiving federal funding primarily to support installation of products utilizing a product-specific waiver or have received a categorical exclusion from NEPA should be exempt from requirements to apply Buy America provisions to the entire NEPA scope and Buy America requirements should be applied based only on the funding agreement requirements utilizing the federal funds.

### **ZETA Recommendations for FHWA Buy America Compliance Demonstration**

We appreciate FHWA’s solicitation for comment on ways to reduce administrative burdens by demonstrating compliance with the requirements. Consistent with the goals of the Paperwork Reduction Act,<sup>8</sup> we encourage FHWA to develop standardized reporting templates that, among other key items, include the bill of materials (BOM) and the country of origin of each component on the BOM. The country of origin should also be confirmed via a FHWA-developed template supplier attestation for only the parts manufactured in the U.S. whose cost contributes to meeting the 55% cost threshold. Lastly, we encourage FHWA to work with funding recipients to understand their existing recordkeeping practices and identify areas where duplicative information collection can be avoided.

ZETA understands that currently, a product used in FHWA-funded projects must meet the iron or steel requirements, even if the existing manufactured products waiver applies. In this proposed rule, FHWA indicates that most products will only require one test, either for manufactured products or for iron or steel. This interpretation aligns with FHWA’s Buy America policies with the OMB guidance,<sup>9</sup> which indicates that agencies should consider an item as either a manufactured product, a construction material, or an iron or steel product and not a combination. FHWA should consider requiring only one test for all products in its purview to better align with OMB guidance and to provide consistency for recipients of federal funds across different agencies.

### **FHWA Should Offer Clarity on Buy America Application to Rolling Stock Under FHWA-Funded Programs**

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<sup>7</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/15/fact-sheet-biden-harris-administration-announces-new-standards-and-major-progress-for-a-made-in-america-national-network-of-electric-vehicle-chargers>

<sup>8</sup> 44 U.S.C. §§ 3501–3521

<sup>9</sup> 88 FR 57750 (August 23, 2023)

Lastly, as we raised in comments to FHWA in May 2023,<sup>10</sup> we would like to reiterate our request for clarity regarding how FHWA funds may be used by recipients to support rolling stock deployment under programs such as the Congestion Mitigation and Air Quality (CMAQ) Improvement Program. Due to an uncertain policy landscape, state and local governments interested in using FHWA funds to support EV deployment have lacked the clarity necessary to confidently apply for funding.<sup>11</sup> This uncertainty has left crucial emissions reductions on the table. Clarifying language that ensures state and local governments may use FHWA funding to support EV deployment along with a reasonable Buy America threshold (below the current 100% requirement) will promote improvements in air quality while working towards the Biden-Harris Administration’s goal of increasing the number of EVs on the roads.<sup>12</sup> In addition, we also ask that a rolling stock standard reflect the category that is being funded and the market behind it. For example, the same FHWA Buy America requirements for transit vehicles may not necessarily be appropriate for refuse trucks or long-haul trucks.

ZETA and its member companies appreciate your attention to these comments and we are available should you have any additional questions. We would also like to reiterate the recommendations in our comments<sup>13</sup> that were made to the White House Office of Management and Budget in March 2023:

- Provide regulatory certainty with a predictable, well-defined timeline for when new domestic preference regulations become effective;
- Ensure that these requirements are implemented with a complete understanding of the zero-emission vehicle supply chain;
- Coordinate across the Executive Branch to ensure consistent application of Buy America requirements in a way that streamlines regulatory burden and avoids different sets of requirements for projects funded by different agencies;
- Ensure that domestic content requirements do not apply at the subcomponent level.

Thank you for your consideration.

Sincerely,



Albert Gore

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<sup>10</sup> <https://www.regulations.gov/comment/FHWA-2022-0027-9074>

<sup>11</sup> See “D. Vehicles and Rolling Stock” (p.19) <https://nap.nationalacademies.org/read/25799/chapter/5#19>

<sup>12</sup> <https://www.energy.gov/sites/default/files/2023-01/the-us-national-blueprint-for-transportation-decarbonization.pdf>

<sup>13</sup> <https://www.regulations.gov/comment/OMB-2023-0004-1821>

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