



National Electrical Manufacturers Association

The association of electrical equipment  
and medical imaging manufacturers  
[www.nema.org](http://www.nema.org)

May 13, 2024

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

**Re: FHWA-2023-0037, Buy America Requirements for Manufactured Products**

Dear Administrator Bhatt:

The National Electrical Manufacturers Association (NEMA) appreciates the opportunity to submit the following comments to the Federal Highway Administration (FHWA) concerning the discontinuation of the longstanding general applicability waiver for manufactured products. Specifically, these comments seek to provide insight into the needs of electrical equipment manufacturers, who supply critical products to highway projects across the country. Electrical products have long been integral to highway projects, they are more critical now than ever, aiding in the deployment of electrified transportation and the energy transition.

NEMA commends FHWA for seeking comments from stakeholders on the discontinuation of the general applicability waiver that has been in place since 1983. As the leading U.S. trade group representing electrical equipment manufacturers, NEMA shares the Administration's fundamental goal of using taxpayer dollars to create good-paying American jobs and shore up domestic supply chains. Our nearly 325 Member companies provide a range of products for high-performance buildings, electric vehicles, and the utility sectors. The electroindustry provides some 1.6 million American manufacturing jobs, resulting in over \$201 billion in annual U.S. GDP contributions. While NEMA supports swift implementation of the IIJA and BABA domestic preference requirements for infrastructure projects that receive federal financial assistance, we also recognize the limited availability of domestically produced materials exacerbated by ongoing supply chain and workforce disruptions.

Over the past two years, NEMA has consistently been raising key issues with respect to agencies' implementation of BABA requirements—chief among them being the crucial importance of having a clear, consistent set of rules across agencies that account for the supply chain realities faced by U.S. manufacturers as they work to comply with the law. Many of the global supply chains that are vital to BABA's success cannot be re-shored immediately, and the federal government must provide continued support and regulatory certainty for U.S. manufacturers as they navigate the practical and logistical impediments for re-orienting supply chains and make the requisite long-term investments to re-shore, near-shore, or friend-shore operations and assets.

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Another persistent impediment to successful BABA policy implementation is inconsistent application of requirements across the country. As manufacturers plan supply chains and carefully consider how best to comply with BABA, varying interpretations or certification requirements detract from the stability and certainty manufacturers need to design supply chains and invest in U.S. manufacturing. NEMA requests FHWA provide detailed trainings and educational information to states on BABA requirements for infrastructure projects.

As FHWA evaluates the availability of BABA compliant products for highway projects, NEMA urges the agency to undertake a market-based, phased approach similar to the targeted waiver processes adopted by FHWA for EV chargers and the National Telecommunications and Information Administration (NTIA) for the Broadband Equity, Access, and Deployment (BEAD) program. In the case of EV chargers, the phase-in period for applying BABA requirements, allowed for analysis of market data and industry feedback on domestic production capacity as domestic preference requirements gradually took effect. With respect to the BEAD program, NTIA issued a limited BABA waiver for certain items and components used to build broadband networks that are not made in the U.S. in sufficient quantities, which it intends to review annually. In short, NEMA strongly encourages FHWA to build on its proven approach and carefully consider issuing additional guidance or waivers for products that have been subject to the manufactured products waiver in the past. For manufactured products, FHWA should conduct regular check-ins with industry stakeholders and base changes in policy on industry feedback and robust market data. Ultimately, NEMA believes that taking such a tailored and strategic approach to growing U.S. manufacturing capacity and strengthening supply chain capabilities will foster responsible right-shoring, drive investments in new markets and expand existing ones, and help achieve the overarching goals of IJJA by ensuring industry has the support and flexibility it needs to navigate near-term challenges and modernize our nation's infrastructure.

The following products have been identified by NEMA members companies as products that are critical to highway projects that may require general applicability waivers of BABA requirements:

1. Lighting control systems
2. Reclosers
3. Padmount switches
4. LED Drivers
5. Charging cables
6. Free standing enclosures
7. Wall-mount enclosures
8. Terminal blocks
9. Charging port connectors
10. Surge suppressors
11. DC power supplies
12. DC charging controllers
13. Energy meters
14. DC uninterruptible power supplies
15. DC power electronics
16. Overvoltage protectors
17. Electrical connectors
18. Industrial ethernet switches
19. Data converters

20. Switchboards
21. Motor control centers
22. Panelboards
23. Construction transformers
24. Safety switches
25. Load interrupter switches
26. Circuit breakers
27. Relays
28. Fiber optic devices
29. Programmable Logic Controllers (PLC)
30. Human Machine Interface (HMI) displays and touchscreens
31. I/O Systems
32. Safety I/O Systems
33. Safety Relays
34. DALI master Remote I/O Systems
35. Signal conditioners
36. WiFi Infrastructure Devices
37. Network Switches

The proposed rule contains specific provisions that would deviate 2 CFR part 184 for enclosures of intelligent transportation systems and other electronic hardware systems that are installed in the highway right-of-way or other real property. NEMA recommends FHWA specify that this requirement only apply to the outermost enclosure of a product. This would follow the precedent set by FHWA's Electric Vehicle Charger Waiver, in which the predominately iron and steel housing unit (enclosure) must meet the Buy America requirements for iron and steel products.

The general applicability waiver for manufactured products has been in place for over 40 years and had set a widely understood and accepted precedent for highway projects over the past decades NEMA encourages FHWA to solicit further stakeholder input on these products. Some products may benefit from a waiver where manufacturing in the U.S. is required but the 55% domestic content requirement is phased in over time, similar to the EV charger waiver. Others could benefit from clearer guidance from FHWA on whether they are considered a subcomponent, component, or manufactured product. Additional guidance from FHWA on how the agency will be defining and assessing kits and systems is needed. Another productive approach would be to allow components and materials to be sourced from countries with which the U.S. has a free trade agreement.

NEMA appreciates FHWA's efforts to gather the most comprehensive and current information available on the state of the domestic market for BABA-covered products used in highway projects, and we urge the agency to consider establishing an ongoing public engagement process that extends beyond the formal comment period for this particular request for information to enable industry stakeholders the opportunity to provide continued feedback. To further discuss the agency's implementation of BABA requirements for highway projects, NEMA requests a meeting with the appropriate staff at the Administration. We appreciate your consideration of the following comments and please contact Madeleine Bugel, Director of Government Relations, at [Madeleine.Bugel@nema.org](mailto:Madeleine.Bugel@nema.org) with any questions you may have.

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Sincerely,

A handwritten signature in black ink, appearing to read "Spencer Pederson", enclosed within a thin black rectangular border.

Spencer Pederson  
Senior Vice President, Public Affairs  
National Electrical Manufacturers Association