

## **Notice of Proposed Waiver of Buy America Requirements for Electric Vehicle Chargers**

**SUBJECT:** Public Interest: Electronic Vehicle Chargers Product Waiver of Section 70914(a) of P. L. 117-58, Build America, Buy America Act, 2021 for U.S. Environmental Protection Agency Financial Assistance Awards

The U.S. Environmental Protection Agency (EPA) is seeking comment on a proposed Public Interest Product Waiver for Electric Vehicle Chargers from the Build America, Buy America Act requirements in section 70914 of the Infrastructure Investment and Jobs Act. This phased waiver is critical to ensure that federal financial assistance recipients can continue making progress on infrastructure projects involving electric vehicle chargers in communities across the country, while incentivizing companies to invest in domestic production of electric vehicle charging by providing a transition period to onshore their supply chains. This proposed public interest waiver is consistent with the waiver recently finalized by the Federal Highway Administration (FHWA)'s National Electric Vehicle Infrastructure Program for electric vehicle chargers. The EPA will consider comments received in the 15-day comment period during our evaluation of the waiver request. This comment period is consistent with the comment period for a new waiver specified in Section 70914(c) of the Build America, Buy America Act. Comments received after this period, but before notice of our finding is published, may be considered to the extent practicable.

### **Introduction**

In November 2021, Congress passed, and the President signed, the Infrastructure Investment and Jobs Act, commonly known as the Bipartisan Infrastructure Law, which included the Build America, Buy America Act. This is a transformational opportunity to build a resilient supply chain and manufacturing base for critical products here in the United States that will catalyze new and long-term investment in good-paying American manufacturing jobs and businesses. Consistent with the policy direction of Executive Order 14005: Ensuring the Future is Made in All of America by All of America's Workers, section 70914 of Infrastructure Investment and Jobs Act establishes government-wide Buy America conditions on public infrastructure projects funded by federal financial assistance awards obligated on or after May 14, 2022.

The EPA remains committed to implementing Build America, Buy America to cultivate the domestic manufacturing base for a range of products. This waiver allows the EPA's assistance recipients to manage their federally funded activities more efficiently. For the purposes of this general applicability waiver, the EPA is proposing a time-limited public interest product waiver of Build America, Buy America requirements for electric vehicle chargers funded through EPA's financial assistance programs.

### **Electric Vehicle Chargers Waiver**

The Office of Management and Budget's April 18, 2022, memorandum, "Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure" (M-22-11) provides guidance to agencies to consider whether it is in the public interest to waive application of a Buy America preference "where an agency determines that other important policy goals cannot be achieved consistent with the Buy America

requirements established by the Build America, Buy America Act and the proposed waiver would not meet the requirements for a nonavailability or unreasonable cost waiver.” This proposed waiver advances Build America, Buy America objectives based on market research conducted by both the EPA and the FHWA, which indicates that the Alternating-Current Level 2 and Direct Current Fast Charging Electric Vehicle charger industry may not immediately be able to produce enough chargers to meet demand of infrastructure projects and satisfy full Build America, Buy America requirements.

Based on market research, the EPA is proposing a temporary, time-limited public interest product waiver for electric vehicle chargers. This proposal is on the basis that applying section 70914 of the Build America, Buy America Act requirements for steel, iron, manufactured products, and construction materials to electric vehicles chargers on EPA-assisted infrastructure projects would be inconsistent with the public interest. The EPA also believes that the phased approach in this proposed waiver provides an incentive to manufacturers to ramp up production while, crucially, ensuring that there is a steady supply of electric vehicle chargers available that are covered by this waiver and therefore are Build America, Buy America-compliant. The EPA proposes that it is in the public interest to waive certain Build America, Buy America requirements for a temporary period on the following grounds:

- Immediately applying all applicable domestic content preferences for these products will delay the implementation of programs established by Infrastructure Investment and Jobs Act providing funding for electric vehicle chargers during an interim phase period as set forth in Phase One below; and
- Applying a single domestic content requirement to electric vehicle chargers is consistent with the domestic content preference under section 70912(6)(B) of the Build America, Buy America Act.

The proposed waiver provides a clear timetable to increase domestic manufacturing and assembly of electric vehicle chargers as quickly as possible while ensuring a steady supply of electric vehicle chargers is covered by this proposed waiver.

This waiver encourages manufacturers to adjust their production process to increase the amount of domestic content over time, consistent with the Congressional direction of Build America, Buy America Section 70935(a), while providing an incentive and advantage to those able to do so more quickly. The proposed waiver is analogous to the FHWA’s electric vehicle charger waiver (published February 21, 2023, at 88 Federal Register 10619) and allows Build America, Buy America requirements for electric vehicle chargers to be applied uniformly, regardless of whether the EPA or the FHWA is the source of Federal funding. Consistency among Federal agencies will further facilitate manufacturers meeting the Build America, Buy America requirements. As the EPA is funding similar chargers across the Infrastructure Investment and Jobs Act, Inflation Reduction Act, and existing appropriated programs, an analogous approach to Build America, Buy America restrictions as laid out in the FHWA’s recent waiver is justifiable. Consistency with the ongoing FHWA’s program avoids confusion, reduces administrative burdens, and advances the public interest.

Consistent with FHWA’s electric vehicle charger waiver, the EPA proposes to gradually phase out its waiver in two steps:

- (1) Phase One: Effective immediately upon the date of publication of the final waiver, the final assembly of electric vehicle chargers must occur in the United States. This phase would apply to electric vehicle chargers manufactured on or before June 30, 2024, for which recipients make expenditures on or after the effective date of this waiver. As defined in the FHWA’s public interest waiver, an “EV charger” is only the electric vehicle charger unit itself and the equipment contained inside it (88 Federal Register 10619, III. F). Components are any article, material, or supply that is directly incorporated into the end product, i.e., the electric vehicle charger.
- (2) Phase Two: Beginning with electric vehicle chargers manufactured on July 1, 2024, the EPA would phase out coverage under this waiver for those previously covered electric vehicle chargers where the cost of components manufactured in the United States does not exceed 55 percent of all the cost of components. This second phase would therefore apply to all electric vehicle chargers that are manufactured on or after July 1, 2024, whose final assembly occurs in the United States, and for which the cost of components manufactured in the United States is at least 55 percent of the cost of all components. For the purpose of this waiver, the cost of a component is based on whether it is purchased or manufactured when it is incorporated into the electric vehicle chargers. The EPA proposes to use the same methodology to calculate the cost of components as the FHWA’s public interest waiver.<sup>1</sup>

Consistent with the FHWA waiver, the electric vehicle charger housing components that are predominantly iron and steel would not be covered by the EPA’s proposed waiver and must meet the iron and steel standard of “all manufacturing processes” for iron and steel for all phases. That is, electric vehicle charger housing components that are predominantly iron and steel would be subject to the iron and steel standard required by the Build America, Buy America Act. For the purpose of this proposed waiver, the electric vehicle charger housing is defined as the component of the electric vehicle charger that contains the electronics that converts electricity to direct current and is also known as its cabinet or enclosure. (88 Federal Register 10619, III). For Phase Two, consistent with FHWA’s waiver, the EPA proposes that the cost of any such housing shall be included as a cost of an EV charger’s components when calculating whether the cost of

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<sup>1</sup> "For the purpose of this waiver, FHWA considers the cost of a component to be based on whether it is purchased or manufactured when it is incorporated into the EV charger. The FHWA will use the standards in FAR 25.003 to determine the allowable costs included in purchased or manufactured components and will use the standards in FAR 31.201-4 to determine overhead costs that are generally allocable. In other words, FHWA will include acquisition costs (including transportation costs to the place of incorporation into the end product) and any applicable duty (regardless of whether a duty-free certificate of entry is issued) for purchased components. For manufactured components, FHWA will include all costs associated with the manufacture of the component (including transportation costs and quality testing) and allocable overhead costs; FHWA will not include profits and any labor costs associated with the manufacture of the end product. The FHWA will consider allocable overhead costs to be (a) costs incurred specifically for the contract; (b) benefit both the contract and other work and can be distributed to each in reasonable proportion to the benefits received; or (c) are necessary to the overall operation of the business, even if a direct relationship to any particular cost objective cannot be shown."

components manufactured in the United States exceed 55 percent of the cost of all components (88 Federal Register 10619, IV).

As defined in the FHWA’s public interest waiver, for all phases, the “date of manufacture” is the date on which the electric vehicle charger has its final assembly occur and is in an operational state (88 Federal Register 10619, III.C, IV). For purpose of this waiver, the EPA proposes to consider an electric vehicle charger to fall under the phase of the waiver that exists on the date when that electric vehicle charger was manufactured.

This waiver will remain in place until terminated by the EPA. In accordance with section 70914(d)(1) of BABA, the EPA will commence a review of this waiver no later than 5 years from the effective date of this waiver, at which time the EPA may discontinue this waiver if it is found to no longer be in the public interest. The EPA, however, reserves the right to modify or shorten the duration of this waiver or any of its phases if it obtains information indicating that this waiver or any or its phases are no longer in the public interest.

For any areas, products, or materials excluded from its waiver, EPA’s existing requirements and policies under the Build America, Buy America Act will continue to apply to all steel, iron, manufactured products, and construction materials.

#### **Anticipated Program Impacts Absent a Waiver**

Build America, Buy America covers more than 60 EPA programs. The Agency is committed to robust implementation of the Act’s domestic preference in an efficient and effective manner. The EPA has reviewed the FHWA’s market research, proposal, comments, and final determination and agrees with their conclusions and adopted waiver schedule, and thus proposes to conclude that applying the Infrastructure Investment and Jobs Act Section 70914 requirements for steel, iron, and manufactured products to electric vehicle chargers would be inconsistent with the public interest. Failure to issue such a waiver would create considerable confusion and administrative burden for recipients that must negotiate different electric vehicle charger requirements across federal funding programs.

This proposed waiver only addresses infrastructure related to charging investments allowed under program guides, which includes electric vehicle chargers and all components of electric vehicle chargers, which are the same electric vehicle chargers funded by the FHWA’s program. To enable consistency among Federal agencies, the EPA’s proposed waiver is structured analogously and tracks the FHWA’s March 23, 2023, public interest waiver.

#### **Assessment of Cost Advantage of a Foreign-Sourced Product**

Under section 70921(b)(2) of the Infrastructure Investment and Jobs Act, agencies are expected to assess “whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products” as appropriate before granting a public interest waiver. The EPA’s analysis has concluded that this assessment is not applicable to this proposed waiver, as this waiver is not based on the cost of foreign-sourced products. The EPA will perform additional market research as it implements the Build America, Buy America

requirements to better understand the market and to limit the use of waivers caused by dumping of foreign-sourced products.

### **Stakeholder Engagement**

The EPA will continue to meet with stakeholders and partner with the Department of Transportation, Department of Energy, the Joint Office of Energy and Transportation, and the Made in America Office to adapt to the evolving domestic electric vehicle charger manufacturing industry. The EPA is also working closely with the National Institute of Standards and Technology's Manufacturing Extension Partnership, relying on continuous market research through their national network of domestic manufacturers and suppliers. Further, the EPA will review any new Requests for Information published by the FHWA every six months from this waiver's effective date to July 1, 2024, to receive information on the state of the electric vehicle charger industry.

### **Proposed Waiver Decision**

Section 70914(b)(1) of the Infrastructure Investment and Jobs Act authorizes the Administrator to waive the requirements of the Build America, Buy America Act if implementation would be inconsistent with the public interest. Due to the critical need to maintain consistency across federal financial assistance programs and to reduce the administrative burden for recipients and agencies ensuring recipients can effectively carry out the EPA-funded activity in a timely manner, thus reducing risks to human health and the environment, the EPA is proposing that it is in the public's interest to approve the time-limited electric vehicle charger product waiver. Once finalized, this waiver would remain in place until terminated by the EPA.

If the waiver is finalized by the EPA, in accordance with section 70914(d)(1) of the Build America, Buy America Act, the EPA will commence a review of this waiver no later than 5 years from its effective date, at which time the EPA may discontinue this waiver if it is found to no longer be in the public interest. The EPA reserves the right to modify, shorten the duration of, or discontinue the final waiver if it obtains information indicating that the waiver is found to no longer be in the public interest. The EPA will coordinate every six months with the Department of Transportation and the Joint Office for Energy and Transportation to discuss the state of the EV charger industry and any pertinent information gained via FHWA's Requests for Information. This information may lead the EPA to amend this waiver.

If you have any questions concerning the contents of this memorandum or would like to submit comments during the public comment period, please contact Dan Coogan at [EPA\\_BABA\\_Waiver@epa.gov](mailto:EPA_BABA_Waiver@epa.gov).