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September 30, 2022

Ms. Stephanie Pollack
Acting Administrator
Federal Highway Administration
1200 New Jersey Ave SE
Washington, DC 20590

RE: Docket No. FHWA-2022-0023 - Notice of Proposed Waiver of Buy America Requirements for Electric Vehicle Chargers

Dear Acting Administrator Pollack,

On behalf of the Associated General Contractors of America (AGC), I thank the Federal Highway Administration (FHWA) for soliciting input from the construction community regarding the proposed waiver for electric vehicle (EV) chargers as part of FHWA regulations and the implementation process for the Build America, Buy America Act (BABAA). AGC strongly supports FHWA's proposal to establish a waiver for domestic procurement requirements under BABAA and previous Buy America requirements for electric vehicle chargers.

To provide some background, AGC is the nation's leading construction trade association. It dates to 1918, and it today represents more than 27,000 member firms including construction contractor firms, suppliers, and service providers. Through a nationwide network of chapters in all 50 states, D.C., and Puerto Rico, AGC contractors are engaged in the construction of the nation's public and private buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, water works facilities and multi-family housing units, among other things.

AGC supports actions to incentivize growth of the American manufacturing industry. However, a rushed implementation of BABAA and removal of the Manufactured Products General Waiver could cause unnecessary delays to the Biden Administration's plan of installing 500,000 EV charging stations throughout America by the year 2030. AGC members are eager to work on delivering high quality EV charging infrastructure. However, with the ongoing problems with supply chains, labor, and material shortages, it is vital that they do not face uncertain regulatory hurdles.

Waiver Timeline

Although AGC supports FHWA's issuance of a waiver for EV chargers and its reasoning, the effective dates for which the waiver applies to do not match that reasoning. As American manufacturing of EV chargers and its components ramps up capacity, more time is required between the proposed phases of the waiver. As mentioned in the discussion of comments in the **November 2021 Request for Information** section, American manufacturers currently have the capacity to produce around 3,000 compliant direct current fast charging (DCFC) chargers a year. This number falls far below President Biden and the general public's expectations from the National Electric Vehicle Infrastructure (NEVI) Program.

AGC suggests that the partial phase out criteria not be based on a specific date, but rather on using market research to identify manufacturing capacity of American-made charging stations such that the rate of production and installation matches the quickly increasing demand from the NEVI program.

Setting target dates as the basis for when to phase out portions of the waiver runs multiple risks. As manufacturers rush to increase production and alter their manufacturing to be able to meet the requirements while facing quickly approaching deadlines, they may not be able to thoroughly test new Buy America compliant components for safety and reliability. As a new technological advancement being introduced throughout America, safety and reliability issues with EV charging stations can adversely affect the public's perception and make them more reluctant to transition from traditional internal combustion engines to electric vehicles.

As supply chain disruptions continue and the manufacturing sector faces [ongoing workforce shortages](#), the likelihood that EV charging manufacturers will be confronted with slowdowns in production remains high. Should manufacturers fail to meet the phase out dates as proposed by FHWA, it will create additional difficulties as the quantity of compliant products will be drastically reduced or completely unavailable to meet ever-increasing demand for charging station installations.

If FHWA is unwilling or unable to track manufacturing capacity as part of the phase-out criteria, AGC believes that the current proposed dates in the waiver will not be successfully met by manufacturers. Taking ongoing market conditions into consideration, AGC suggests that the initial transition period be extended by two years to begin in 2025.

Proposed Use of Installation Date for Waiver Dates

AGC believes the installation date as the dates for the waiver and phase-out stages is not ideal. There is a significant difference in time between when a product is manufactured and when an installer receives it. In the proposed scenario of the waiver, installers of EV charging stations will take on additional risk as product delivery times can vary due to many circumstances out of their control. Supply chain disruptions, delivery delays, workforce issues, and prolonged adverse weather are a few examples out of many external factors which can contribute to missing installation deadlines. As it is written now, chargers which were compliant when initially purchased would no longer be usable should a delay occur near one of the listed dates of the phase-out.

AGC is in favor of using the manufacturing date of the product as the date on which to judge whether the EV charging stations are compliant with Buy America requirements. Using the manufacture date would drastically reduce the opportunity for external factors to cause delays and mitigate hardships on suppliers and installers as manufacturers are at the beginning of the process and are not exposed to as many factors that could lead to delays.

Inclusion of Predominantly Steel and Iron Components for Coverage Under Waiver

To maintain consistency and reduce confusion, FHWA should include all predominantly steel and iron components of EV charging stations as part of the proposed waiver. Singling out any specific component to be excluded from the waiver would simply complicate efforts to streamline the process to meet America's ever-increasing demand for EV charging infrastructure.

Although Buy America requirements have long been a part of FHWA's projects, the ongoing supply chain difficulties are causing increasing hardships in the construction industry. Per the request for more data in the waiver, AGC recommends that FHWA consider the results of AGC's recent [2022 Workforce Survey](#) and [Buy America Materials Survey](#) to better understand the overall conditions in the industry.

AGC's [2022 Workforce Survey](#) results demonstrate that the main cause of project delays that contractors are experiencing is due to material shortages or longer lead times, an experience shared by 82% of respondents. As a result of the increasing costs, fifty-eight percent of contractors reported experiences in which their projects were canceled, postponed, or scaled back.

AGC's [Buy America Materials Survey](#) further illustrates the challenges faced from material shortages. Ninety-three percent of survey takers reported that they are currently experiencing longer than usual lead times and/or allocations. As the results of that survey show, the materials affected are wide-ranging. Although EV charging stations were not a specific item included in the survey, various steel products and electrical equipment were consistently chosen as materials that continue to be difficult or unavailable to procure.

In addition, our members were asked which materials they believed would not be able to currently comply with new Buy America requirements. The results from that question point out that the respondents believe the same materials, various steel products and electrical equipment, would not be able to comply should the current situation stay the same or worsen.

Excluding iron and steel components from the waiver would nullify many of the intended benefits expected from this waiver, as any excluded item could be the single cause for delays in the complete assembly of EV charging stations.

Conclusion

AGC appreciates FHWA's efforts to expand domestic manufacturing while attempting to avoid placing unnecessary hardships on the installers of EV charging stations and the general public.

AGC, however, is disappointed that the agency did not undertake outreach and research to a similar degree of rigor on other manufactured products and construction materials subject to BABAA.¹ While this waiver will address the challenges present with EV charging stations, the manufactured product is merely one example of a much larger industry-wide problem when it comes to meeting these new requirements.

Thank you for the opportunity to comment on this important issue. AGC looks forward to more opportunities to weigh in as FHWA implements these new requirements.

Sincerely,



James V. Christianson
Vice President, Government Relations

¹ On November 24, 2021—14 days after President Biden signed the *Infrastructure Investment and Jobs Act* (IIJA) into law—USDOT and the Department of Energy published an [RFI](#) seeking comments within 47 days to discern whether EV charging stations could meet BABAA requirements. FHWA, on the other hand, issued an [RFI](#) to help understand the possible impacts of BABAA requirements on the vast field of construction materials utilized on federal-aid highway projects on July 28, 2022—225 days after IIJA enactment—and sought comments within 21 days.