

conviction or administrative action, the state which holds the records or action, and a statement of whether the motor vehicle action resulted from the same incident or arose out of the same factual circumstances related to a previously reported motor vehicle action. A privacy act statement and a new FAA form number 1600–85 was created and added to the online submission portal.

*Respondents:* 480 FAA airmen with drug and alcohol related motor vehicle actions provide approximately 599 reports per year over the last three years.

*Frequency:* On occasion.

*Estimated Average Burden per*

*Response:* 30 minutes.

*Estimated Total Annual Burden:* 30 minutes per report and 299.5 hours for all reports annually.

Issued in Oklahoma City, OK, on November 3, 2023.

**Christopher Marks,**

*Security Specialist, Security & Hazardous Materials Safety/Enforcement Standards & Policy Division, AXE-900.*

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**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[Docket No. FHWA–2023–0029]

#### Biannual Request for Information on the Status of the Electric Vehicle (EV) Charger Industry

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Notice; request for information (RFI).

**SUMMARY:** On February 21, 2023, FHWA established a Build America, Buy America (BABA) implementation plan by publishing a temporary public interest waiver of Buy America requirements for steel, iron, manufactured products, and construction materials in electric vehicle (EV) chargers. This short-term, temporary waiver was structured to enable EV charger acquisition and installation to immediately proceed while also ensuring the application of Buy America to EV chargers by the phasing out of the waiver over time. While promulgating the final waiver, FHWA announced that it would conduct biannual RFIs to receive information on the status of the EV charger industry. Requests for comment include, but are not limited to, the number of chargers recently produced by EV charger manufacturers, projections on chargers expected to be

produced, and the number of EV chargers recently purchased by recipients of Federal financial assistance and projected to be purchased by recipients of Federal financial assistance in the near future.

**DATES:** Comments must be received on or before December 26, 2023. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit comments by only one of the following ways:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

- *Instructions:* You must include the agency name and docket number at the beginning of your comments. Except as described below under the heading “Confidential Business Information,” all submissions received, including any personal information provided, will be posted without change or alteration to [www.regulations.gov](http://www.regulations.gov). For more information, you may review the U.S. DOT’s complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, (202) 366–1562, or via email at [Brian.Hogge@dot.gov](mailto:Brian.Hogge@dot.gov). For legal questions, please contact Mr. David Serody, FHWA Office of the Chief Counsel, (202) 366–4241, or via email at [David.Serody@dot.gov](mailto:David.Serody@dot.gov). Office hours for FHWA are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access and Filing

A copy of this notice, all comments received on this notice, and all background material may be viewed online at [www.regulations.gov](http://www.regulations.gov) using the docket number listed above. Electronic retrieval assistance and guidelines are also available at [www.regulations.gov](http://www.regulations.gov). An electronic copy of this document also may be downloaded from the Office of the Federal Register’s website at:

[www.FederalRegister.gov](http://www.FederalRegister.gov) and the U.S. Government Publishing Office’s website at: [www.GovInfo.gov](http://www.GovInfo.gov).

#### Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI.

You may ask FHWA to give confidential treatment to information you give to the Agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as “Confidential”; (2) send FHWA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. The FHWA will protect confidential information complying with these requirements to the extent required under applicable law. If DOT receives a FOIA request for the information that the applicant has marked in accordance with this notice, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.29. Only information that is marked in accordance with this notice and ultimately determined to be exempt from disclosure under FOIA and § 7.29 will not be released to a requester or placed in the public docket of this notice. Submissions containing CBI should be sent to: Mr. Brian Hogge, FHWA, 1200 New Jersey Avenue SE, HICP–20, Washington, DC 20590 via mail or via email at [brian.hogge@dot.gov](mailto:brian.hogge@dot.gov). Any comment submissions that FHWA receives that are not specifically designated as CBI will be placed in the public docket for this matter.

#### Background

On August 31, 2022, FHWA issued a notice of a proposed waiver of Buy America requirements for EV chargers, at 87 FR 53539 (“Proposed Waiver”). After reviewing the comments received, on February 21, 2023, FHWA established a BABA Implementation Plan for EV charging equipment through a temporary public interest waiver of Buy America requirements for steel, iron, manufactured products, and construction materials in EV chargers under 23 U.S.C. 313 and section 70914

of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58), at 88 FR 10619 (“Final Waiver”). As of March 23, 2023 (the effective date), the Final Waiver applied to all EV chargers manufactured before July 1, 2024, whose final assembly occurs in the United States, and whose installation has begun by October 1, 2024 (“the Final Assembly Phase”). Starting with EV chargers manufactured on or after July 1, 2024, FHWA will begin to phase out coverage of EV chargers under the Final Waiver, and the Final Waiver will then only apply to EV chargers 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 (“the 55 percent phase”). Further, under the Final Waiver, if an EV charger’s housing is predominantly iron or steel, such housing is not covered by the Final Waiver at any time; instead, such housing must comply with FHWA’s existing Buy America requirements.

The FHWA intends to issue at least one additional RFI before July 1, 2024.

#### Comments Received After Issuance of Waiver

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244), upon publishing the Final Waiver in the **Federal Register**, FHWA provided an opportunity for public comment on this finding until March 22, 2023.<sup>1</sup> The FHWA received four comments during this period: one from the Information Technology Industry Council (ITI), one from an individual from the Vogel Group (Vogel), one from the Nucor Corporation (Nucor), and one from the Aluminum Extruders Council and Aluminum Extrusions Fair Trade Committee (AEC/AEFTC). As FHWA believes that communication and collaboration with stakeholders is key to ensuring that the Final Waiver both enables EV charger acquisition and installation to immediately proceed while also ensuring the application of Buy America to EV chargers, it is taking this opportunity to respond to these comments.

The ITI commented that it supported the Final Waiver and urged the U.S. Government as a whole to consider waiving the application of BABA

procurement preferences for information technology procured as part of infrastructure projects. The FHWA appreciates ITI’s support but issuing a governmentwide waiver is beyond the scope of this comment period and FHWA’s authority.

Vogel commented that there is growing concern that there is not enough domestic capacity to meet the demand for the production of the housing of EV chargers in the United States and asked how FHWA plans to monitor the cost and availability of EV chargers if Buy America-compliant housing is not available. The FHWA would welcome data on this issue (see the questions for EV charger manufacturers below) and will use these biannual RFIs to monitor the cost and availability of EV chargers. Finally, Vogel questioned whether FHWA is prepared to act if a State applies for a waiver of Buy America requirements for the housing of an EV charger. The FHWA will respond to all waiver requests with respect to the housing of an EV charger in accordance with FHWA’s existing policies and applicable laws and regulations.

Vogel also asked several questions regarding the Final Waiver’s applicability to the housing of EV chargers. In particular, Vogel questioned whether it is acceptable to manufacture housing components in the United States, export the housing components for partial assembly overseas, and then have the partially-completed charger imported for final assembly in the United States; what FHWA considers to be sufficient documentation that the housing components were produced in the United States before exportation; and what FHWA considers to be the steel or iron content that makes an EV charger’s housing predominantly iron or steel. To the extent that FHWA has not addressed these concerns in existing guidance documents discussing FHWA’s Buy America requirements, including the set of frequently asked questions (FAQs) responding to questions concerning the Final Waiver,<sup>2</sup> FHWA will seek to do so in subsequent guidance documents. In this RFI, FHWA also invites comments on these FAQs as it works to develop additional guidance that is useful for stakeholders to achieve the Final Waiver’s goals of enabling EV charger acquisition and installation to quickly proceed while ensuring the

application of Buy America to EV chargers.

Nucor and the AEC/AEFTC both provided similar comments, which largely repeated concerns raised in their separate comments on the Proposed Waiver. Both commenters repeated that the Final Waiver is contrary to Congressional intent in enacting BIL, where Congress found, in section 70911(4), that “entities using taxpayer-financed Federal assistance should give a commonsense procurement preference for the materials and products produced by companies and workers in the United States.” Nucor further added that the Final Waiver is contrary to Congressional intent in enacting section 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424), which expanded Buy America coverage to steel products. The AEC/AEFTC commented that the Final Waiver is generally contrary to the Administration’s policy of maximizing the use of American products in federally funded infrastructure and promoting domestic manufacturing in clean energy. Nucor and AEC/AEFTC also reiterated their concerns, stated in their comments to the Proposed Waiver, regarding the perceived unlimited duration of the Final Waiver, as both commenters stated that there is no end date specifically provided in the Final Waiver.

Nucor also repeated the claim it made in the Proposed Waiver that the Final Waiver is contrary to the Administration’s policy of promoting clean energy because it allows for the use of imported steel, which prioritizes environmentally unfriendly foreign steel at the expense of cleaner America-made steel. Nucor further repeated that FHWA has successfully applied its Buy America requirements to steel components and subcomponents of manufactured products for decades, that suppliers of FHWA products have needed to comply with these requirements for years, and that there is nothing unique about steel used in EV chargers that would make compliance more difficult. Finally, Nucor repeated its belief that domestic steel for use in EV chargers is readily available.

As these comments from Nucor and the AEC/AEFTC repeat what these commenters provided in response to the Proposed Waiver, which FHWA responded to in issuing the Final Waiver, FHWA does not find it necessary to provide further detailed responses.<sup>3</sup>

<sup>3</sup> For FHWA’s response that the waiver is contrary to Congressional intent in enacting section 165 of

<sup>1</sup> Pursuant to section 117(a)(2) of the SAFETEA–LU Technical Corrections Act of 2008, FHWA did not delay the effective date of its finding due to the requirement that it provide an opportunity for public comment.

<sup>2</sup> The FAQs related to the Final Waiver are available at: [https://www.fhwa.dot.gov/construction/contracts/buyam\\_qaev/buyam\\_qaev.pdf](https://www.fhwa.dot.gov/construction/contracts/buyam_qaev/buyam_qaev.pdf). The FHWA has also issued other FAQs regarding Buy America, which can be found at: [https://www.fhwa.dot.gov/construction/contracts/buyam\\_qa.cfm](https://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm).

The AEC/AEFTC emphasized that it strongly opposes the Final Waiver's coverage of aluminum extrusions used in EV chargers. The AEC/AEFTC opined that aluminum extrusions—used in EV chargers and components of EV chargers—are readily available from domestic sources. While this may be true, removing aluminum extrusions from coverage under this waiver would mean that these extrusions would need to comply with existing Buy America requirements under 23 U.S.C. 313 and section 70914 of BIL, and it is not clear to FHWA whether the domestic supply of aluminum extrusions mentioned by AEC/AEFTC comply with these requirements. The comment did not provide data on whether all manufacturing processes used to make aluminum extrusions occurred in the United States, nor did it state the amount of extrusions that are produced in compliance with Buy America requirements and the amount required by the EV charger industry for FHWA to ensure that removing coverage of extrusions from the Final Waiver would not detrimentally impact the delivery of EV infrastructure projects.

#### Request for Information

In the Final Waiver, FHWA announced that it would conduct biannual RFIs during the final assembly phase to assess industry progress on producing an EV charger that would conform with the 55 percent phase and determine whether the EV charger industry is on track to meet the timeline set out in the Final Waiver. As stated in the Final Waiver, based on the information received in response to these RFIs, FHWA may modify the start date of the 55 percent phase after providing adequate notice of its intention to do so. Under the 55 percent phase, as laid out in the Final Waiver, EV chargers that are manufactured on

the Surface Transportation Assistance Act of 1982 and BIL and Administrative policy regarding domestic production, see *id.* At 10623. For FHWA's response to Nucor's comment regarding the perceived unlimited duration of the waiver, see *id.* At 10622–23. For FHWA's response to Nucor's claims on the environmental impacts of foreign steel, see 88 FR at 10624. For FHWA's response to Nucor's comment that FHWA has successfully applied its Buy America requirements to steel components of manufactured products for decades, see *id.* At 10624. For FHWA's response that there is nothing unique about steel used in EV chargers that would make compliance more difficult, see *id.* For FHWA's response to Nucor's comment that domestic steel for use in EV chargers is readily available, see *id.* At 10632–33. The FHWA notes that in response to comments by Nucor and others that the domestic steel industry has the capacity to supply steel for use in EV chargers, FHWA determined that it was not in the public interest to apply the waiver to the housing of an EV charger if it is predominantly iron or steel.

and after July 1, 2024, would conform with the Final Waiver only if final assembly occurs in the United States and the cost of components manufactured in the United States exceeds 55 percent of the cost of all components.

The FHWA encourages commenters to share all information responsive to the questions below, including confidential information. Doing so will allow FHWA a complete picture of the current state of the domestic EV charger industry and its anticipated ability to meet 55 percent domestic content standard by July 1, 2024, as provided in the final waiver. The FHWA therefore encourages detailed responses where possible, including confidential information where applicable, from all stakeholders to ensure that FHWA has a complete picture of the domestic EV charging industry.

The FHWA requests information on the following questions. Please indicate in your written response which question(s) you are answering. The FHWA encourages stakeholders to answer as many questions as possible.

#### EV Charger Manufacturers

1. Approximately how many EV chargers have you manufactured since the beginning of calendar year 2023 until now that are ready for installation? What are the charger types (*i.e.*, direct-current fast chargers (DCFC) or alternating-current level 2 (ACL2) chargers) and specifications (*e.g.*, maximum charging power, connector type)?

a. Of the chargers manufactured since the beginning of calendar year 2023 until now that are ready for installation, how many have final assembly occur in the United States and have the housing, if predominantly iron or steel, comply with FHWA's existing Buy America requirements? What are the types of these chargers (*i.e.*, DCFC or ACL2 chargers) and specifications (*e.g.*, maximum charging power, connector type)?

b. Of the chargers manufactured since the beginning of the calendar year until now that are ready for installation, how many have final assembly occur in the United States; have the housing, if predominantly iron or steel, comply with FHWA's existing Buy America requirements; *and* have the cost of components manufactured in the United States be at least 55 percent of the cost of all components? What are the types of these chargers (*i.e.*, DCFC or ACL2 chargers) and specifications (*e.g.*, maximum charging power, connector type)?

2. Of the EV chargers you have manufactured since the beginning of calendar year 2023 until now that are ready for installation, how many are intended to be compliant with FHWA's NEVI Standards and Requirements (23 CFR part 680)?

a. Of these NEVI-compliant chargers referred to in question 2, how many have final assembly occur in the United States and have housing, if predominantly iron or steel, that complies with FHWA's existing Buy America requirements? What are the charger types (*i.e.*, DCFC or ACL2 chargers) and specifications (*e.g.*, maximum charging power, connector type)?

b. Of these NEVI-compliant chargers referred to in question 2, how many have final assembly occur in the United States; have housing, if predominantly iron or steel, that complies with FHWA's existing Buy America requirements; *and* have the cost of components manufactured in the United States be at least 55 percent of the cost of all components? What are the charger types (*i.e.*, DCFC or ACL2 chargers) and specifications (*e.g.*, maximum charging power, connector type)?

3. What is the average time between when a charger is ordered and when it is finished being manufactured? What is the average time between when a charger is ordered and when it is shipped? Do these times vary? If so, why?

4. Approximately how many EV chargers do you expect to produce from now until June 30, 2024? What do you expect the charger types (*i.e.*, DCFC or ACL2 chargers) and specifications (*e.g.*, maximum charging power, connector type) to be?

5. Of the chargers expected to be produced from now until June 30, 2024, how many are expected to be compliant with FHWA's NEVI Standards and Requirements (23 CFR part 680)?

a. Of the NEVI-compliant chargers expected to be produced from now until June 30, 2024, how many are expected to have final assembly occur in the United States and have housing, if predominantly iron or steel, that complies with FHWA's existing Buy America requirements? What are the expected charger types (*i.e.*, DCFC or ACL2 chargers) and specifications (*e.g.*, maximum charging power, connector type)?

b. Of the NEVI-compliant chargers expected to be produced from now until June 30, 2024, how many are expected to have final assembly occur in the United States; have housing, if predominantly iron or steel, that complies with FHWA's existing Buy

America requirements; *and* have the cost of components manufactured in the United States be at least 55 percent of the cost of all components? What are the expected charger types (*i.e.*, DCFC or ACL2 chargers) and specifications (*e.g.*, maximum charging power, connector type)?

6. For chargers expected to be ordered from now until June 30, 2024, what is the average expected time between when a charger is ordered and when its manufacture is complete? What is the average expected time between when a charger is ordered and when it is shipped? Do you expect that these times will vary? If so, why?

7. How have Federal incentives for EVs and EV charging infrastructure (such as the EV tax credits included in the Inflation Reduction Act (Pub. L. 117–169) and the Federal funding for EV charging infrastructure included in BIL) affected your business plans and models? To what extent have they supported or inhibited expansion or onshoring of your operations?

8. Will you be able to supply EV chargers to all 50 States, as well as the District of Columbia and Puerto Rico? Have you experienced or do you expect to experience any limitations to distributing EV chargers to certain locations? If so, what are these limitations?

9. What obstacles, if any, have you encountered in conducting final assembly of EV chargers in the United States? What obstacles do you expect to face in the future?

10. What costs have you incurred in manufacturing EV chargers that comply with the Final Waiver? What costs do you expect to incur?

11. What obstacles, if any, have you encountered in manufacturing EV chargers where the cost of components manufactured in the United States is at least 55 percent of the cost of all components? What obstacles do you expect to face in the future?

12. What obstacles, if any, have you encountered in manufacturing EV chargers where the housing, if predominantly iron or steel, complies with FHWA's existing Buy America requirements?

13. What benefits have you achieved by producing EV chargers in the United States compared to abroad (*e.g.*, jobs created, wages paid, innovations spurred, more reliable supply chains, lower transportation costs)?

14. Are there any components currently manufactured outside of the United States that could be manufactured in the United States at reasonable cost but are not? If yes, what are those components, and why do you

believe that they are not being manufactured in the United States?

15. What steps can be taken to increase the number of EV chargers that have final assembly occur in the United States; have the cost of components manufactured in the United States be at least 55 percent of the cost of all components; and, if the housing is predominantly iron or steel, have housing that complies with FHWA's existing Buy America requirements? How long might it take to undertake those steps?

16. What is the volume of EV chargers that could be shifted to being manufactured to the specifications stated in question 15? How long would that shift take? How many EV chargers could be manufactured if that shift occurred and over what time period?

#### **For Recipients of Federal Financial Assistance**

17. Please identify all EV charger manufacturers currently selling, manufacturing, or operating EV chargers in the United States, of which you are aware.

18. Which EV charger manufacturers are you aware of that produce an EV charger where final assembly occurs in the United States and where, if the housing is predominantly iron or steel, the housing complies with BABA's iron and steel standards? Which EV manufacturers are you aware of that produce an EV charger where final assembly occurs in the United States; where the cost of components manufactured in the United States is at least 55 percent of the cost of all components; *and* where, if the housing is predominantly iron or steel, the housing complies with FHWA's existing Buy America requirements?

19. What sources of Federal financial assistance have you used to purchase EV chargers from the beginning of calendar year 2023 until now? For each source, please list the specific source of Federal financial assistance (*e.g.*, FHWA NEVI funds, EPA Clean School Bus Program funds), include the number of EV chargers purchased using that source of funds, the charger types purchased (*i.e.*, DCFC or ACL2 chargers) and their specifications (*e.g.*, maximum charging power, connector type)?

20. How many EV chargers do you expect to purchase from now until June 30, 2024, using Federal financial assistance? Please list all sources of Federal funding used (*e.g.*, FHWA NEVI funds, EPA Clean School Bus Program funds). For each source, please include the number of EV chargers purchased using that source of funds, the charger types purchased (*i.e.*, DCFC or ACL2

chargers) and their specifications (*e.g.*, maximum charging power, connector type)?

21. What is the average time between when EV chargers are purchased and when they are delivered? What is the average time between when EV chargers are purchased and when they are installed and operational? Have you found these times to vary? If so, why do you believe this is the case?

22. Have you received different cost estimates for EV chargers manufactured before and after the publication of the Final Waiver on February 21, 2023? If so, what is the difference?

23. Have you received different delivery time estimates for EV chargers manufactured before and after the publication of the Final Waiver on February 21, 2023? If so, what is the difference?

24. Has any difficulty in procuring chargers that are compliant with the Final Waiver caused you to slow your implementation of EV charging? If so, how many chargers were affected and how long was the delay?

#### **General**

25. The FHWA also requests comments on the FAQs on Buy America requirements for EV chargers that are posted at [https://www.fhwa.dot.gov/construction/contracts/buyam\\_qaev/buyam\\_qaev.pdf](https://www.fhwa.dot.gov/construction/contracts/buyam_qaev/buyam_qaev.pdf), as well as any additional issues or topics that you believe would be useful for FHWA to address in subsequent guidance. In providing such comments, please refer to the specific question number in the FAQs that you are commenting on.

Issued in Washington, DC, under authority delegated in 49 CFR 1.85.

**Shailen P. Bhatt,**

*Administrator, Federal Highway Administration.*

[FR Doc. 2023–24696 Filed 11–7–23; 8:45 am]

**BILLING CODE 4910–22–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

**[Docket Number FRA–2015–0036]**

#### **Petition for Extension of Waiver of Compliance**

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on October 13, 2023, Union Pacific Railroad Company (UPRR) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232 (Brake