

May 13, 2024

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Federal Highway Administration  
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Washington, D.C. 20590

*Re: Buy America Requirements for Manufactured Products; Docket No. FHWA–2023–0037*

## **Introduction**

The Intelligent Transportation Society of America (ITS America) is grateful for the opportunity to comment on the Federal Highway Administration’s (FHWA) Notice of Proposed Rulemaking (NPRM) on Buy America Requirements for Manufactured Products in federal highway projects. As the nation’s leading advocate for the technological modernization of our transportation system by focusing on advancing research and deployment of intelligent transportation technology, ITS America works to make transportation safer, greener, and smarter for all.

ITS America was founded in 1991 as an advisory council to USDOT on technology innovation and emerging transportation technologies. ITS America is the only organization in the country that represents all sectors – public, private, academic, and nonprofit – to advance transportation technology. Our membership includes state and city departments of transportation, transit agencies, metropolitan planning organizations, automotive manufacturers, technology companies, engineering firms, automotive suppliers, insurance companies, and research and academic universities. Our vision is one of a better future transformed by transportation technology and innovation and our work accelerates the deployment of technology that saves lives, promotes sustainability, and advances more equitable transportation.

ITS America recognizes the U.S. Department of Transportation (USDOT) and Biden Administration’s efforts to strengthen domestic manufacturing and supporting our nation’s infrastructure. The historic investments of the Infrastructure Investment and Jobs Act (IIJA) will have a lasting impact on transportation networks in the United States and the future of life-saving transportation technology. We understand the desire to rescind FHWA’s 1983 Manufactured Products General Waiver and want to ensure that targeted waivers will be issued for the technology products not yet readily available under Build America Buy America (BABA) domestic content thresholds.

Given the insufficient domestic availability of certain ITS technology and electronic equipment and the potential for significant cost increases for federal highway projects, FHWA should implement targeted, time-limited waivers on specific technologies in federally funded projects. It is critical that waivers exist for these technology products whose components may not yet reach the 55% domestic content by cost requirements. Additionally, FHWA should ensure that the new implementation of new manufactured product standards and “produced in the U.S.” 55% content

cost requirements do not pose significant financial strain on the planning and development of current or upcoming Federally authorized infrastructure projects.

We are pleased to submit the following additional comments with respect to the NPRM:

### **Technology's Role in Roadway Safety**

The fatality problem on our nation's roadways needs serious solutions. From 2011 to 2020, 350,000 people died on American roads. NHTSA estimates that there were 40,990 deaths on American roads in 2023 alone.<sup>1</sup> This represents a 10.5% increase compared to 2020 and is the highest percentage increase since 2007. These numbers do not capture the millions of Americans that are injured on our roads every year, nor the estimated \$800 billion in financial costs that such crashes cost our country annually. These numbers demonstrate the scale of the problem and the need for a multi-pronged solution. The status quo approach to transportation safety measures is insufficient and innovative solutions are *required* to address this ongoing tragedy.

We recognize and applaud USDOT and FHWA for their efforts on the path to Vision Zero and accomplishing the goals of the National Roadway Safety Strategy (NRSS). USDOT investments in safety-critical technology for our nation's roads in grant and formula funding, as well as priorities like the Department's draft National Vehicle-to-Everything (V2X) Deployment Plan, are significant and welcome steps toward deploying transportation technology on our roads.

ITS America wants to underscore the importance of ITS technology and its life-saving potential on our roadways. Transportation technology and infrastructure play a critical role in preventing crashes and improving safety as a whole on roads and highways across the U.S. Commonplace technology such as modern traffic signals, vehicle detection equipment, retroreflective sheeting, LED lighting, and more are core parts of the roads we know today, and they all play a role in ensuring the safety of road users. It is critical that federal highway projects are using up-to-date, secure, and reliable technology products. The NPRM as written, without waivers for certain manufactured technology products, would jeopardize the ability for recipients of FHWA funds to procure and deploy the best technology available, slowing down much needed improvements to our nation's transportation infrastructure.

### **Strengthening U.S. Infrastructure**

IJA took a major step forward in strengthening U.S. infrastructure, particularly on our highways, roads, and bridges. The Biden-Harris Administration rightly emphasized the need for an upgraded infrastructure to decrease traffic congestion, improve bridge and road conditions, promote climate resiliency, and increase connectivity between Americans.<sup>1</sup> However, further investments are needed if we are to truly modernize U.S. infrastructure and remain competitive with countries around the world. A rescinded general waiver without additional targeted waivers or lead-in time would slow our country's progress on infrastructure improvements and limit the efficacy of safety

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<sup>1</sup> <https://www.nhtsa.gov/press-releases/2022-traffic-deaths-2023-early-estimates>

investments. Given the economic advantages, non-domestic supply chains play an important role in strengthening digital and physical infrastructure assets in the U.S.

Companies in the ITS industry have voiced concerns that their supply chains are not ready for an immediate rescinding of the manufactured products waiver, and such a rule without an on-ramp for technology would jeopardize connected vehicle infrastructure, toll road technology, and messaging signs on roads that play a crucial role in safety. For example, cameras and sensors on toll roads and collection booths – a key driver of billions in revenue and an important recipient of federal funding – may be negatively impacted. Without additional time and waivers for certain manufactured products, there may be delays in improving critical safety infrastructure on our highways and roads.

One area of concern for ITS America in relation to this NPRM is the current Cellular Vehicle-to-Everything (C-V2X) roadside unit supply chain, which the 5G Automotive Association notes is primarily manufactured in Mexico, Europe, and Asia.<sup>2</sup> C-V2X device availability is a critical component of the successful implementation of USDOT’s Draft National V2X Deployment Plan, a bold and necessary proposal which is poised to significantly reduce fatalities on American roads. ITS America reiterates that FHWA should ensure that domestic manufacturing requirements are designed in a manner which would not materially decrease the ability of the transportation sector to deploy these promising safety tools, and that C-V2X devices represent a critical candidate for targeted manufactured product waivers.

### **Targeted Manufactured Product Waivers**

We agree with previous comments on project delays and increased costs on the FHWA Request for Comment on Manufactured Products issued on March 17, 2023. If targeted waivers for technology are not put in place, there will be significant project delays and, in some cases, the technology may not be deployed at all given the limited capacity domestically to meet the content requirements. The accompanying Request for Information lists some examples of products that may not be readily compliant with FHWA’s proposed manufactured product standards. These include vital components of the road including retroreflective sheeting; LED lamps/lighting systems; utility product; ITS hardware; traffic signals and controllers; traffic cameras; changeable message signs; and vehicle detection equipment.

For products that currently do not meet the BABA requirements, FHWA should consider issuing as many waivers as necessary to meet the project’s technology needs. Such targeted waivers will give manufacturers insight into market demand that can lead to investments in domestic manufacturing to fill U.S. supply chains. The waivers should provide a sufficient time frame to allow for increased domestic manufacturing and sourcing capacity for specific ITS technology. These waivers should be issued for a period sufficient until manufacturers and deployers can bring supply chains onshore and the cost of components manufactured, mined, or produced in the U.S. reaches 55%. This will decrease reliance on these waivers in the long run. If waivers are not

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<sup>2</sup> Comment from 5G Automotive Association, Docket No. FHWA-2023-0037-0001. Filed on May 13, 2024. Available at: <https://www.regulations.gov/comment/FHWA-2023-0037-0054>

issued, progress in roadway safety, efficiency, and resiliency may be halted or even reversed, and this will materially affect the IIJA's impact in communities across the country.

FHWA recognizes that changing supply chain requirements "may result in cost increases, project delays, and product unavailability if not done carefully." FHWA should ensure that implementation of its new BABA guidelines and any subsequent targeted waivers do not impede the progress made on projects authorized and obligated under IIJA, nor future projects funded under a new surface transportation law. ITS America strongly recommends that targeted manufactured product waivers should be issued when the lack of domestic availability may lead to any chance of cost increases and delays as outlined in responses to the accompanying Manufactured Products RFI.

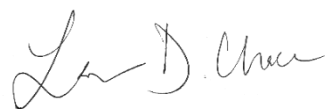
While technologies and products outlined in RFI responses may serve as a guide for the issuing of waivers, FHWA should consider the ever-changing technological landscape and future transportation technology innovations that may necessitate future waivers beyond those discussed in the original RFI. We have recently seen the urgent need to upgrade infrastructure in the U.S., and a rescinded manufactured products waiver without targeted waivers as on-ramps for technology products will be harmful to the progress made under the IIJA and may negatively impact U.S. leadership and competitiveness on this issue.

### **Considerations for Proposed BABA Manufactured Product Requirements**

Considering FHWA's request for comments on the timing of the new BABA requirement implementation, ITS America recommends that the new manufactured product requirements should apply only to federal projects authorized and obligated after the final rule takes effect. There are authorized projects in the U.S. being designed, planned, and hired for that relied on the Manufactured Products General Waiver. Projects authorized prior to the final rule effective date, with or without obligated funds, should be allowed to operate under the previous Manufactured Products General Waiver going forward to ensure that projects are completed on time and without significant cost changes.

ITS America expresses strong support for waivers for manufactured ITS technology products that are critical to safety on our roads and strengthening U.S. infrastructure. We look forward to working with FHWA on this issue going forward. If you have any questions, please contact ITS America's Senior Director of Policy and Advocacy, Bobby McCurdy, at [bmccurdy@itsa.org](mailto:bmccurdy@itsa.org).

Sincerely,



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