



Industry Reacts to FHWA's Plans to Rescind Manufactured Products General Waiver

By Amy King

Changes are coming to the U.S. Department of Transportation's Federal Highway Administration's (FHWA) general waiver for manufactured products used in federal-aid highway projects. As part of the guidelines for manufactured products within the Buy America Build America Act (BABA), FHWA plans to discontinue the use of the manufactured products waiver and create standards that would apply to those products. According to the FHWA, this change is to modernize outdated policy, boost domestic supply chains and bolster American manufacturing while creating well-paying jobs.



Background on BABA

To receive federal funding for public infrastructure projects, the FHWA requires that the steel, iron and manufactured products – such as intelligent transportation system (ITS) equipment – used on these projects must be produced in the U.S. These requirements are referred to as Build America, Buy America requirements. The Buy America requirement for manufactured products began in 1978 when the Surface Transportation Assistance Act was enacted and was later modified by the 1983 Surface Transportation Assistance Act.

Following the passage of the 1983 Act, FHWA determined that it would be in the public interest to waive the Buy America requirements for manufactured products, creating

the Manufactured Products General Waiver, which continues to this day. The waiver applies to a wide range of ITS equipment. With the Manufactured Products General Waiver, manufactured products permanently incorporated into FHWA-funded projects do not need to be produced domestically, except for predominantly iron or steel manufactured products and predominantly iron or steel components of manufactured products.

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act, including the Build America, Buy America Act (BABA). BABA was designed to strengthen the previous Buy America laws, as well as increase American production, protect national security and support high-paying jobs.

To enforce BABA guidelines, the FHWA published a Request for Comment regarding the Manufactured Products General Waiver on March 17, 2023, and received nearly 10,000 comments. Based on those findings and after considering the intent of BABA, the FHWA recently proposed discontinuing the Manufactured Products General Waiver. On March 7, 2024, the FHWA issued a Notice of Proposed Rulemaking, or NPRM, to propose standards for manufactured products produced in the U.S. and Buy America-compliant.

In a statement released by the FHWA, Federal Highway Administrator Shailen Bhatt said, “We’re proposing to do away with a policy that did not incentivize restricted American-based manufacturing. This policy supports the Administration’s commitment to create good-paying jobs within the U.S., allowing domestic manufacturing to grow. American businesses now have a long-term incentive to tap into the broader federal government market.”

Current Plans for BABA

Under BABA, all manufactured products – such as ITS equipment (Ex: traffic signals and controllers, traffic cameras and changeable message signs) – must be produced in the U.S., and the cost of the components of a manufactured product that are mined, produced or manufactured in the U.S. is greater than 55 percent of the total cost of all components of the manufactured product. An exception occurs when a standard for determining the minimum amount of domestic content of the manufactured product is established under law or regulation.

The FHWA is also proposing to apply its current BABA requirements to the iron or steel components of precast concrete, as well as the iron or steel enclosures for ITS and other electronic hardware systems installed along highway rights-of-way or other property. Under FHWA’s proposed standards, when classified as manufactured products, precast concrete and electronic hardware systems would need to meet the standards for manufactured products. This means the iron and steel cost within those products will count toward the 55 percent domestic content threshold.



Photo provided by Mobatrex

The recent proposed rule will not change BABA requirements currently applicable to iron or steel products. Nor would it impact products classified as construction materials or excluded materials, such as cement and cementitious materials; aggregates like stone, sand or gravel; or aggregate binding agents or additives.

Discontinuing the Manufactured Products General Waiver

The FHWA recognizes that discontinuing the Manufactured Products General Waiver and applying Buy America requirements on manufactured products may result in cost increases, project delays and/or product unavailability if not done carefully. The FHWA acknowledges that some products are not currently produced in the U.S. and might not be for a while. The administration plans to issue a Request for Information (RFI) on the domestic availability of specific manufactured products commonly used in FHWA-funded projects. This will help guide implementation.

Along with the RFI, the FHWA may also issue time-limited and targeted waivers covering products not currently produced domestically. The FHWA believes using targeted waivers is a better model than the current waiver, which does not consider the availability of individually manufactured products and has no set ending to incentivize domestic manufacturing. The FHWA's goal is that once targeted waivers expire, the domestic production of covered products would be sufficient to ensure that BABA-compliant products will be available for use in FHWA-funded projects.

Impact on the Industry

With the impending elimination of the Manufactured Products General Waiver, the use of domestically produced manufactured products in federally funded ITS infrastructure projects would greatly increase. This means that much of the public safety industry will need to adapt their policies and procedures regarding where and how they get their manufactured products. Public infrastructure projects with federal financial assistance will be required to procure products that comply with BABA. In addition, project owners may be required to obtain a certification of BABA compliance from the manufacturer.

Given that BABA has been in law since 2021, many public safety companies and municipalities have already begun the process of procuring BABA-compliant products and traffic signal control equipment when possible. One such company is Q-Free, a traffic management software and hardware supplier – including traffic signal controllers and central Advanced Transportation Management System software – for state and local municipalities.

Today, Q-Free produces their line of ATC traffic signal controllers in Tucson, Arizona, in full compliance with BABA requirements without waivers. The components inside their controllers, such as IO modules and engine boards, are purchased from U.S.-based manufacturers and meet that portion of the BABA requirement without waivers.



Whitney Nottage, Senior Executive Vice President of Operations, Q-Free

“We’ve seen a noticeable positive impact on our supply chain,” said Whitney Nottage, senior executive vice president of operations at Q-Free. “Throughout the pandemic and in the years following, many manufacturers had lead times of nine to 18 months. Transitioning to U.S.-based contractors and manufacturers has contributed to our lead times consistently less than 90 days.”

Along with faster lead times, Q-Free also experiences improved quality control and limited issues with incoming products when using domestic products.

“Before BABA, there was a lot of foreign manufacturing,” said Nottage. “Our incoming inspections of these products resulted in failure rates up to 23 percent. Now, less than one percent are rejected since using U.S.-based manufacturers.”

Nottage adds that the impact of their company alone adds more than \$20 million to the U.S. economy, and Q-Free is only 15 percent of the traffic signal control market.

“This could positively impact our entire industry when you consider all the products,” said Nottage. “Even beyond the ITS industry, the impact on our economy is huge and far from trivial,”

While Q-Free's controllers meet BABA requirements, some components of their products, such as a controller power supply, are still manufactured overseas. Q-Free is actively looking at ways to adjust these components to meet BABA guidelines.

Another ITS company using BABA-compliant products is MoboTrex, a manufacturer and distributor of traffic cabinets and signals, intersection control hardware and software and specialty products. MoboTrex has locations in Iowa, Texas, Virginia and Illinois. All of MoboTrex's traffic cabinets are made in the U.S. and are compliant to BABA. The cabinets are produced in their Pflugerville, TX factory. Along with the cabinets, multiple signal lines are made in Texas and Arkansas and meet BABA guidelines.



Brent Katauskas, Sales Director, MoboTrex

"We've been a U.S. manufacturer for more than 100 years," said Brent Katauskas, sales director at MoboTrex. "We are proud to be an American manufacturer. In fact, we doubled down on that when we moved from Austin to Pflugerville in October 2022. We had an opportunity to move to Mexico to stay cost competitive, but we didn't want to lose our employees. We are happy staying in the U.S."

Like most companies, MoboTrex has a few products that still require the Manufactured Products General Waiver, but they are working to get those compliant.

"A few of our signal products are built in Mexico due to pricing," said Katauskas. "We are reevaluating that process to bring them to the U.S. and make them compliant. It will be an additional expense in our products, but it's doable. We already have the infrastructure and people. We just need the tooling to do it."

Katauskas feels that discontinuing the waiver will level out competition within the industry.

"With us being in the U.S., we've been at a cost disadvantage for a long time due to the wage disparity between the U.S. and Mexico," said Katauskas. "We're happy to see this effort to move things back to the U.S. We're excited about finally competing on cost and having the taxpayer dollars that pay for these items stay in the U.S. and not leave the country."

Yunex Traffic, a developer of ITS controllers and products, also recognizes the importance of supporting local jobs and fostering domestic manufacturing.



Michael Gaertner Executive Vice President Technology at Yunex Traffic US

"Rather than viewing BABA as an obstacle, we encourage collaboration between industry stakeholders, government agencies and manufacturers," said Michael Gaertner, vice president of products and solutions, development and operations at Yunex

Traffic. "Together, we can address the challenges posed by global supply chains while fostering innovation. This includes exploring alternative sourcing options, incentivizing domestic production and investing in research and development."

Implications for the Future

While the benefits of discontinuing the Manufactured Products General Waiver are advantageous to the economy and industry, there are many questions and concerns that remain. The FHWA closed commenting for the March 2024 NPRM in May 2024, and the administration is expected to announce their decision regarding discontinuing the waiver this fall. Assuming the waiver is discontinued, the FHWA may enact new rulemaking in 2025.

"The transition period will be difficult," said Brent Katauskas of Mobotrex. "Customers will need to find vendors they haven't worked with before, and products are going to cost more. It will be interesting to see how the government handles discontinuing the waiver. There are certain products that can't come back to the U.S. for a long time. Ultimately, we will be a stronger industry and bring back a lot of jobs that were lost over the years."

Along with MoboTrex, Yunex Traffic is also committed to keeping jobs within the U.S. but acknowledges the global nature of the industry.

"Some components of ITS equipment simply cannot be procured domestically due to technological limitations, supply chain complexities or cost considerations," said Yunex Traffic's Michael Gaertner. "Striking a balance between local employment and industry viability is crucial. We advocate for clear and dynamic definitions of compliance under the BABA program. What constitutes compliance today may evolve as technology advances, and we need guidelines that reflect this reality. Clarity ensures that companies can make informed decisions while adhering to the program's objectives."

Despite being an advocate for discontinuing the waiver, Q-Free has concerns as well.

"There are a lot of outstanding questions on BABA that we hope to see the FHWA clarify," said Q-Free's Whitney Nottage. "For instance, agencies interpret the component cost requirements differently. We need common language on how the 55 percent is calculated for a domestically sourced product and a clear definition of *components*. Also, how will the rule be enforced? We expect the FHWA to follow other industries like FEMA where customers obtain certifications from manufacturers, but there's still unknowns."

Industry representatives are hopeful that these and other questions will be answered after an official decision has been made by FHWA later this year. 🟢