



National Electrical Manufacturers Association

The association of electrical equipment
and medical imaging manufacturers
www.nema.org

April 13, 2022

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th St. NW
Washington, DC 20503

Celeste Drake
Director
Made in America Office
725 17th St. NW
Washington, DC 20503

Dear Director Young and Director Drake:

The Biden-Harris Administration has taken quick action to implement the historic Infrastructure Investment and Jobs Act (IIJA). The IIJA represents a historic milestone in the transformation of U.S. infrastructure systems toward accessible, electrified transportation systems, modernized buildings and lighting, a more resilient grid, and increased efficiency of expanded U.S. manufacturing. The legislation also includes important Build America, Buy America (BABA) provisions that in the long term will allow for more resilient and equitable domestic supply chains and support the creation of high-paying American jobs. The ambitious timelines outlined in the law combined with the difficulties faced by U.S. manufacturers in obtaining raw materials and supplies used to support infrastructure projects in our current global geopolitical environment underscore the need for a nimble and strategic approach to implementation.

NEMA represents 325 pro-growth companies employing over 370,000 U.S. workers in more than 6,100 facilities covering every state. Our members are electrical equipment and medical imaging manufacturers that make safe, reliable, and efficient products and systems. These industries produce \$130 billion in shipments and \$38 billion in exports of electrical equipment and medical imaging technologies per year. NEMA members are directly or indirectly involved in fully 1/3rd of the IIJA funding. The electroindustry has a robust domestic manufacturing base and supports the fundamental goal of creating good-paying American jobs and shoring up our domestic supply chains.

NEMA supports the swift implementation of the IIJA and shares the Administration's goals to build climate resiliency, create high quality jobs, and promote equity and inclusion, while strengthening our domestic supply chains. NEMA also recognizes the continued limitation of U.S. based materials, exacerbated by ongoing supply chain and workforce disruptions, impedes the industry's ability to deliver on IIJA objectives and anticipates project delays due to BABA limitations. With that in mind NEMA requests IIJA implementing agencies consider the following:

- 1. Include the substantial transformation test in the guidance for IJA funded programs.** Allowing for the substantial transformation rule^{1,2,3,4} within IJA funded programs will support American manufacturing jobs. This test requires that, regardless of the origin of specific components, substantial manufacturing activities must take place in either the United States or qualified countries.

However, it does not factor in all types of manufacturing processes performed in the U.S. and therefore does not support all domestic jobs. Simple assembly processes such as screwing, fastening, and cutting are not taken into account as part of the substantial transformation test. We urge the Administration to account for all the jobs that are supported in the United States via the substantial transformation rule, regardless of the degree or skill level.

- 2. Provide that the component test includes all labor in the cost analysis.** This would promote American jobs, consistent with both Congress's intent and existing regulatory regimes governing manufacturer supply chains.

Under current government procurement rules, the component test does not include the cost of labor when determining if the cost of the domestic components exceed 55% of the cost of all the components. NEMA Members' products may require low value components to be sourced from foreign suppliers, but much of the development, design, and assembly is done domestically. A method of determining domestic content that factors in the cost of U.S. labor would benefit domestic firms, and positively contribute to domestic manufacturing and jobs.

- 3. Make the Commercially Available off-the-shelf (COTS) partial waiver, provided for in federal procurements, available for programs governing federally funded infrastructure grants.** Both government and industry have benefitted from the partial COTS waiver that applies to federal procurements. This waiver eases the administrative burden associated with tracking the cost of components and manufacturers have been incentivized to enter the government marketplace, which has supported American manufacturing jobs.

In addition, the COTS waiver has given the government access to cost effective technology available in the commercial marketplace. Many energy efficient products would not be available for existing government procurement programs without the COTS waiver, since a large portion of the electrical and electronic components are not domestically available today and would not be available in sufficient quantity or cost for several years even if the government were to provide incentives for domestic production. The COTS waiver currently applies to government procurement and the same criteria must apply to projects funded through federal grants.

- 4. Establish consistent criteria for domestic products across all agencies, programs and funding methods.** To ensure that manufacturers can continue to support the U.S. economy and the important goals of the IJA, it is crucial that the new Buy America programs implemented are

¹ <https://www.trade.gov/rules-origin-substantial-transformation>

² <https://www.energy.gov/sites/prod/files/PF2010-54a.pdf>

³ <https://www.law.cornell.edu/cfr/text/2/176.160>

⁴ https://www.cbp.gov/sites/default/files/assets/documents/2016-Apr/icp026_3.pdf

consistent across federal agencies and consistent with existing Buy America(n) programs that already meet IJJA's standards. Consistent definitions for domestic criteria will ensure that funds are implemented quickly, promote U.S. workers, and minimize disruptions to the contracting and purchasing processes. Overly complex and confusing criteria have a disproportionate effect on small and medium sized U.S. businesses. A consistent framework will also avoid costly delays in the interpretation, inspection and enforcement that will result without such a framework.

NEMA supports the long-established rules of federal procurement policy and national trade policy under the Trade Agreements Act of 1979 (TAA). As agencies develop guidance they should be mindful that the adoption of overly restrictive definitions will unnecessarily hinder U.S. trade relationships. NEMA Members benefit under the TAA regime because it provides substantial opportunities for U.S. manufacturers to sell into foreign government procurement markets.

One facet of this, the World Trade Organization Government Procurement Agreement (WTO GPA) encourages international harmonization of technical requirements, provides economies of scale that reduce costs for public infrastructure, and enables the government to access best-in-class technologies from allied signatory countries. NEMA asks the federal procurement policy provisions under the TAA be incorporated into the IJJA funding guidelines to the extent possible.

Beyond the policies detailed above, the IJJA specifically allows for general applicability waivers called public interest waivers, when there is a written determination by the relevant federal agency or OMB. Historically, general applicability waivers have been granted for specific projects, end products, as well as for components and subcomponents. To allow critical IJJA funded projects to be completed in the near term, certain electrical products may require waivers while the industry works to overcome the current global supply chain crisis in the long term.

The Biden-Harris Administration has a historic opportunity to rebuild, revitalize, and modernize our nation's infrastructure while also supporting good paying American jobs. The accelerated implementation deadlines outlined in the IJJA combined with ongoing disruptions in our nation's supply chains, workforce shortages, and inflationary pressures present real challenges in obtaining raw materials and components needed to successfully implement this law.

We look forward to working with you to ensure that the Buy America(n) requirements are implemented in a way that support American jobs while navigating near-term challenges in the global supply chain.

Sincerely,

Debra M. Phillips
President and CEO
National Electrical Manufacturers Association