



**ASSOCIATION OF
METROPOLITAN
WATER AGENCIES**

LEADERS IN WATER

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July 22, 2022

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Office of Wetlands, Oceans, and Watersheds
Office of Water
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Via email

Re: Comments on EPA’s proposed Build America, Buy America waiver for projects funded by 16 EPA water infrastructure and protection programs

Dear Mr. Connor, Ms. Anderer, and Mr. Lerner:

The Association of Metropolitan Water Agencies (AMWA) appreciates the opportunity to comment on EPA’s proposed six-month program waiver of the requirements of section 70914(a) of the Infrastructure Investment and Jobs Act of 2021 (IIJA) for eligible projects financed by selected EPA water infrastructure and water resources protection programs. While AMWA appreciates and supports EPA’s willingness to temporarily waive the new Build America, Buy America rules for these selected programs, the association believes there should be greater consistency across all IIJA-funded programs in terms of waiver applicability, to ensure that all projects seeking funding are on a level playing field. Specifically, AMWA believes these waivers should apply to funds obligated from May 14 until six months after the waiver’s effective date, however, the pre-decisional draft waiver is not clear on the proposed duration.

AMWA supports EPA’s decision to grant public interest waivers for the following 16 programs until six months *after the proposed waiver takes effect*: National Estuaries Program, Geographic Programs, Clean Water and Drinking Water Grants to U.S. Territories and District of Columbia, Clean Water Indian Set-aside, Drinking Water Infrastructure Grant – Tribal Set-Aside, Congressionally Directed Spending/Community Project Funding, Sewer Overflow and Stormwater Reuse Municipal Grants, 319 Nonpoint Source Management Program Implementation, Gulf Hypoxia Program, US.-Mexico Border Water Infrastructure Program,

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Small and Disadvantaged Community Grants Program, including Emerging Contaminants and Drinking Water Infrastructure Resilience & Sustainability, Reducing Lead in Drinking Water Grant Program, Voluntary School and Child Care Program Lead Testing and Remediation Grant Program, USMCA Implementing Legislation, Alaska Native Villages and Rural Communities Water Grant Program, and Wetlands Planning, Protection and Restoration Act Programs. Because Build America, Buy America mandates did not previously apply to funding delivered through many of these programs, AMWA believes starting the clock on a six-month waiver once the waiver takes effect will give program managers and entities seeking funding additional time to prepare for the new requirement.

As currently written, the pre-decisional draft waiver includes contradictory information about the duration of the proposed waiver period. In three places EPA states it would be in effect “for six months from the effective date of this waiver.” In another instance the waiver is said to last “for a period expiring six months after the issuance of this waiver.” But later in the draft EPA states the waiver “will apply to all funds obligated by these programs prior to November 14, 2022,” implying that the six-month period began on the May 14, 2022 effective date of the Build America, Buy America mandate.

AMWA believes EPA should clearly state that the waiver period extends until six months after the waiver’s effective date. Additionally, AMWA urges EPA to also retroactively apply the waiver to any project funds obligated between May 14, 2022 and the waiver’s effective date. This will avoid the creation of a roughly two-month window where obligated funds would be subject to the new Build America, Buy America rules. Given that EPA is proposing a temporary Build America, Buy America waiver because it would be in the public interest to give project sponsors more time to prepare for the new requirements, it would be illogical and unfair to apply the new Build America, Buy America rules to a narrow slice of projects whose funds were obligated after the statutory effective date but before EPA’s public interest waiver were to take effect.

Potential water infrastructure projects require a great deal of planning and design well before any official applications or plans are submitted. Until enactment of IIJA last year, a project sponsor intending to seek grant funds through one of these programs would have conducted planning and design activities in the absence of any domestic sourcing requirement. Immediately applying this Build America, Buy America new requirement to projects that are already in the planning or design phase would effectively prohibit these projects from eventually receiving aid – unless their sponsors were to restart the planning design process to ensure that all manufactured products to be used in the project complied with the new Build America, Buy America preference. However, if a project sponsor did revise its ongoing project planning design efforts in light of the new requirement to attempt to incorporate domestically sourced materials, even in the best case this would likely delay the project as the planning design activities are redone. AMWA therefore believes that the immediate application of IIJA’s domestic sourcing requirement would be inconsistent with the public interest because it would either prevent worthy projects from competing for funding or require project sponsors to substantially revise

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their ongoing planning design efforts – and thus delay completion of important water infrastructure projects.

For these reasons, AMWA strongly supports waiving the Build America, Buy America requirements for projects using funds obligated through the above 16 programs between May 14, 2022 and the date that is six months after the effective date of the waiver. However, AMWA believes that EPA should take a consistent approach to all public interest waivers extended to water infrastructure funding programs, and should therefore similarly delay the effective date of expanded Build America, Buy America rules that IJA applied to the Water Infrastructure Finance and Innovation Act and State Revolving Fund programs. Other federal departments and agencies (including DOT, Interior, HUD, and FEMA) have implemented a minimum six-month adjustment period following the effective date of the new Build America, Buy America rules, during which they would not be enforced. It makes little sense for different federal agencies to have different policies related to the applicability and effective date of Build America, Buy America rules, and it is especially confusing that EPA is proposing to enforce different conditions for Build America, Buy America waivers depending on the program through which a water infrastructure project sponsor seeks funding. These program-to-program inconsistencies will make it more difficult for communities and water systems to apply for and receive IJA funding, and should therefore be streamlined as much as possible.

Again, to ensure that a wide range of critical water infrastructure projects are not unnecessarily delayed as they pursue federal funding assistance, AMWA requests that EPA consistently implement public interest waivers that delay application of new or expanded Build America, Buy America rules to water infrastructure programs until at least six months after the latest waiver takes effect.

Thank you for the opportunity to comment on this matter. AMWA looks forward to continuing to work with EPA to promote cost-effective water infrastructure investment.

Sincerely,



Thomas Dobbins
Chief Executive Officer

cc: Radhika Fox, OW
Jennifer McLain, OGWDW
Andrew Sawyers, OWM
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