



**ASSOCIATION OF
METROPOLITAN
WATER AGENCIES**

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June 28, 2022

Timothy Connor
Water Infrastructure Division
Office of Water
U.S. Environmental Protection Agency

Kiri Anderer
Drinking Water Protection Division
Office of Water
U.S. Environmental Protection Agency

Via email

Re: Comments on EPA’s proposed Build America, Buy America waiver for certain SRF-funded projects

Dear Mr. Connor and Ms. Anderer,

The Association of Metropolitan Water Agencies (AMWA) appreciates the opportunity to comment on EPA’s program waiver of the requirements of section 70914(a) of the Infrastructure Investment and Jobs Act of 2021 (IIJA) for eligible projects financed by the State Revolving Fund (SRF) that submitted engineering plans and specifications to an appropriate state agency prior to May 14, 2022. While AMWA appreciates EPA’s willingness to waive the new Build America, Buy America rules for certain SRF-funded projects, 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.

AMWA supported passage of IIJA and its infusion of \$43 billion dollars for the State Revolving Funds (SRFs) to support efforts such as replacing lead service lines and addressing emerging drinking water contaminants like PFAS. These funds are subject to an existing requirement that all the iron and steel products used in SRF-funded projects must be produced in the United States. These iron and steel products are defined in statute to include “lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.”

IIJA expanded these existing American Iron and Steel requirements that already applied to the Drinking Water SRF and several other infrastructure financing programs. Under the new law, all manufactured products used in SRF-funded projects must also be produced in the United States, unless a waiver is provided by EPA. This new requirement is effective for projects receiving SRF funding on or after May 14, 2022.

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Potential SRF-funded projects require a great deal of planning and design before officially submitting engineering plans and specifications. Until enactment of IJA last year, a project sponsor would have conducted these planning and design activities for a potential SRF project in the absence of any domestic sourcing requirement for manufactured products. Immediately applying this new requirement to projects that are already in the planning or design phase, but which had not yet submitted engineering plans, would effectively prohibit these projects from eventually receiving SRF 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 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 manufactured products, 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 IJA’s domestic sourcing requirement for manufactured products 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 their ongoing planning design efforts – and thus delay completion of important water infrastructure projects.

For these reasons, AMWA urges EPA to ensure consistency across all funding programs and, at minimum, waive the new Buy America preference for projects that initiated project design planning prior to May 14, 2022, not just for those that have officially submitted engineering plans. This would match the conditions of waiver eligibility already proposed for WIFIA-funded projects. These waivers will allow projects that had initiated planning to apply for a SRF loan under the rules that were in place when that planning began. Meanwhile, any project for which planning began on or after May 14, 2022 will have to be in full compliance with the Buy America preference for manufactured products.

AMWA further believes that it would be appropriate for EPA to follow the lead of other departments and agencies (including DOT, Interior, HUD, and FEMA) and implement a minimum 6-month adjustment period following the effective date of the new 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 of Buy America waivers, and it is especially confusing that EPA is proposing to enforce different conditions for Buy America waivers depending on whether the project would receive funding through the SRFs or WIFIA. These program-to-program inconsistencies will make it more difficult for communities and water systems to receive BIL funding, and should therefore be streamlined as much as possible.

Finally, AMWA urges EPA to move quickly to implement BIL waivers for other programs that fund water infrastructure projects that will deliver a clear public health benefit. These include the Reducing Lead in Drinking Water program and the Drinking Water System Infrastructure Resilience and Sustainability Program, which are now subject to the Buy America rules and therefore must wait for additional program-specific waivers before making key decisions about how FY22 funding will be obligated.

Mr. Timothy Connor and Ms. Kiri Anderer
June 28, 2022
Page 3

Again, to ensure that a wide range of critical water infrastructure projects are not unnecessarily delayed or cancelled, AMWA requests that EPA implement consistent public interest waivers for projects that initiated project design planning prior to May 14, 2022. EPA should announce any intention to propose these additional waivers as soon as possible, so project sponsors can have some assurance that they will not have to reconduct project design planning work that is already underway, but the agency should also explore a longer blanket waiver to give funding applicants additional time to examine and adjust to the new Buy America requirements.

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,

A handwritten signature in black ink, appearing to read "Thomas Dobbins". The signature is fluid and cursive, with a long horizontal stroke at the end.

Thomas Dobbins
Chief Executive Officer

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