



**ASSOCIATION OF  
METROPOLITAN  
WATER AGENCIES**

**LEADERS IN WATER**

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May 17, 2022

Mr. Alejandro Escobar  
Chief, WIFIA Technical Support Branch  
Office of Water  
U.S. Environmental Protection Agency

Via email

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

Dear Mr. Escobar,

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 Water Infrastructure Finance and Innovation Act (WIFIA) that initiated project design planning prior to May 14, 2022. AMWA supports application of this waiver.

The WIFIA program is an established mechanism that helps drinking water and wastewater systems obtain low-cost financing for qualifying infrastructure projects that are generally expected to cost more than \$20 million. Since creation of the program in 2014, it has included a requirement that all the iron and steel products used in a WIFIA-funded project 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 applied to WIFIA and several other infrastructure financing programs. Under the new law, all manufactured products used in a WIFIA-funded project must also be produced in the United States, unless a waiver is provided by EPA. This new requirement is effective for projects receiving WIFIA funding on or after May 14, 2022.

Obtaining a WIFIA loan is a multi-step process that begins with EPA’s issuance of a notice of funding availability. Prospective borrowers must then submit a letter of interest, which is evaluated by EPA before selected projects are formally invited to apply for a loan. Once

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received, the application is evaluated, a loan agreement is negotiated and approved, and then the loan is closed. As this process is ongoing, a potential WIFIA project may be in various stages of planning or design, and a project that may currently be a candidate for WIFIA may have already undergone years of planning and design work before a loan is sought.

Until enactment of IIJA last year, a project sponsor would have conducted these planning and design activities for a potential WIFIA 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 sought or received a WIFIA loan, would effectively prohibit these projects from eventually receiving WIFIA 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 IIJA’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 supports EPA’s waiver of the Buy America preference for manufactured products for WIFIA-eligible projects that initiated project design planning prior to May 14, 2022. This waiver will allow projects whose planning has already begun to apply for a WIFIA loan under the rules that were in place when project design planning began, but will ensure that 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 that took effect on that date, in order to obtain a WIFIA loan. AMWA believes this approach to be consistent with congressional intent and is representative of an appropriate public interest waiver pursuant to section 70914(b)(1) of IIJA.

Finally, while AMWA appreciates the expediency with which EPA has proposed this public interest waiver for certain WIFIA projects, the association urges EPA to move with equal dispatch to propose similar waivers for other water infrastructure programs subject to IIJA’s Buy America requirements. For example, for the first time IIJA applies a domestic sourcing preference for manufactured products to the Drinking Water State Revolving Fund (DWSRF). This means that any project receiving DWSRF funds on or after May 14 must follow the new rules – even if the project’s design planning began well before enactment of IIJA. This has the potential to cause project sponsors to have to redo these project design planning efforts, and has led to confusion among some water systems as to whether they should advance to putting essential water infrastructure projects out to bid, or wait for additional guidance to be forthcoming from EPA. Similar concerns could arise for project sponsors that may eventually seek financial assistance through other EPA programs subject to the new Buy America rules,

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such as the Reducing Lead in Drinking Water program, the Drinking Water System Infrastructure Resilience and Sustainability Program, and the Clean Water State Revolving Fund.

To ensure that a wide range of critical infrastructure projects are not unnecessarily delayed, AMWA requests that EPA propose similar public interest waivers for projects seeking funding from these programs, and for which project design planning commenced prior to May 14, 2022. Additionally, EPA should announce any intention to propose these 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.

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 blue ink, appearing to read 'Michael Arceneaux', with a long horizontal flourish extending to the right.

Michael Arceneaux  
Acting Chief Executive Officer

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