



American Water Works
Association

Dedicated to the World's Most Important Resource®



January 3, 2022

The Honorable Celeste E. Drake
Director, Made in America Office
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

The Honorable Radhika Fox
Assistant Administrator
Office of Water
U.S. Environmental Protection Agency
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Director Drake and Assistant Administrator Fox:

The historic enactment of the *Infrastructure Investment and Jobs Act* (IIJA) provides the opportunity to support the modernization of our water infrastructure and improve the delivery of safe, reliable drinking and clean water services to all Americans. Your agencies will play a critical role in the success of these funds including through your work to implement the law's Build America, Buy America mandates (§70914). As the Office of Management and Budget (OMB) works to develop guidance, we strongly request that OMB and the U.S. Environmental Protection Agency (EPA) work closely to ensure that the guidance and implementation reflects the unique circumstances that guide water and wastewater sector infrastructure projects, and provides needed flexibility to avoid project delays, cost increases, or hinderances to a utility's ability to consider advanced treatment technologies. We specifically request that you provide a general applicability waiver consistent with the law's public interest criterion to ensure that we can deliver on the Administration's commitment to modernize our water infrastructure to address climate resiliency and safe and reliable water services for all Americans.

As agencies tasked with constructing water infrastructure, we must be assured that a reliable supply of technologies exist to comply with the Safe Drinking Water Act and Clean Water Act's regulatory standards to protect public health and the environment. Our mandates to protect public health and the environment are

driven using Best Available Technology (BAT), regardless of the origin of a manufactured product. Additionally, we want to ensure that the law does not inhibit technological innovations to mitigate adverse climate change impacts or water quality challenges. These concerns are on top of the worries we know many sectors share regarding whether Buy America requirements will compound already strained supply chains, exacerbate cost overruns, or project delays, or undermine project affordability and water ratepayer value.

Our sector has a history of working with EPA to ensure compliance with existing Buy American requirements in place for iron and steel. However, the expansion through IJA to construction materials and manufactured products gives us significant concern over how it may impact project design, investment, and ability to leverage federal funding. Water infrastructure projects can be heavily dependent on manufactured technologies and equipment, both to achieve regulatory compliance and to advance innovative projects for water quality treatment, emissions reductions, resource recovery, and energy efficiency. Scaling up our existing compliance with American iron and steel mandates to meet the expanded IJA requirements will require significant adjustment in how utilities and EPA evaluate projects for federal assistance.

As our regulatory agency, EPA understands the water sector's statutory landscape as well as how utilities invest in water infrastructure. We support close collaboration between OMB and EPA as IJA guidance is developed and implementation gets underway. In addition, we urge the following:

- An explicit general applicability waiver for manufactured products for water infrastructure investments related to drinking water, wastewater, and water recycling.
- Ongoing dialogue with the water sector organizations to discuss concerns and proactively seek resolutions that will ensure effective and efficient implementation of IJA and compliance with Build America, Buy America.
- Guidance that explicitly states that projects under construction, under design or awaiting approval of a State Revolving Fund commitment of assistance will not incur retroactive application of new requirements, and policies to avoid increased project costs and delays.

We strongly advocate for granting the water sector a general applicability waiver based upon the public interest criterion for manufactured products to eliminate the risk of innovative approaches and utility system upgrades being sidelined for federal investment, project delays and increased costs. Specifically, we request that you issue a general public interest waiver for products that: (1) demonstrate the ability to improve energy efficiency, resource recovery, reduce carbon emissions, conserve water, improve water quality, or increase water use efficiency; (2) utilize commercial information technology, or (3) replace existing products as part of a specialized system that does not lend itself to a place of origin criterion.

For the water sector to accelerate action on climate change, we must preserve access to the best available technologies to reduce carbon emissions and energy use regardless of country of origin. The water sector contributes 10 percent of global greenhouse gas emissions. The climate crisis is too severe to leave any tools in the toolshed, especially when newly installed products often have a 20 to 30-year lifespan.

Water, wastewater treatment and water recycling systems are highly complex and technologically advanced, and utilities must design and invest in projects that ensure federal regulatory compliance. Further, our facilities are not "plug and play," but integrated systems that depend on computers and specialized technologies with components universally sourced to guarantee a reliable supply and compliance with public health regulations. Applying the expanded requirements to projects which impact existing systems and technologies could mean utilities decide not to invest in projects under IJA or be faced with a process of applying for multiple waivers, denial of any one of which could upend the ability to implement the project.

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Already, our sector is experiencing component shortages, labor shortages, and clogged freight and logistics networks that threaten our efforts to modernize our water infrastructure. The proposed waiver will ensure the Buy America mandate does not further burden supply chains and threaten access to the best available technology to cost effectively and sustainably monitor, treat, and deliver water supplies to all Americans.

The next six months are crucial to ensure that implementation of the law is set up for success, delivering efficient and timely construction of water infrastructure projects. We look forward to working with you to advance an effective policy that can lead to swift project construction to ensure safe, reliable, and affordable water quality improvements and drinking water for all Americans.

Sincerely yours,

American Water Works Association
Association of California Water Agencies
Association of Metropolitan Water Agencies
California Association of Sanitation Agencies
National Association of Clean Water Agencies
National Water Resources Association
Water Environment Federation
WaterReuse Association