



AMERICAN PUBLIC WORKS ASSOCIATION

Your Comprehensive
Public Works Resource

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July 21, 2022

The Honorable Radhika Fox
Assistant Administrator, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Request for Comments on Temporary Public Interest Waiver of Section 70914 of
P.L. 117-58, Build America, Buy America Act, 2021 for Selected EPA Funding Programs

Dear Assistant Administrator Fox,

On behalf of the more than 30,000 members of the American Public Works Association (APWA), we appreciate the opportunity to submit comments to the Office of Water on the proposed waiver. APWA includes not only personnel from local, county, state, and federal agencies, but also private sector personnel with direct oversight and involvement in our nation's water systems.

APWA has been proud to support the Infrastructure Investment and Jobs Act (IIJA) and believes this historic and comprehensive law warrants thoughtful implementation in order to avoid disruptive unintended consequences. It is for this reason; **we strongly recommend waivers that allow for at minimum an adjustment period of six months that take effect following the release of final comprehensive implementation guidance by a respective agency.**

Furthermore, APWA urges for purposes of equity and ease of coordination across different programs that **all waivers apply to projects for which design planning has been initiated prior to the effective date of the Build America, Buy America Act (BABAA).** "Initiated design planning" should include efforts to procure services related to the water infrastructure project, such as the date of a bid or execution of a contract for rates studies, feasibility studies, design, planning, or engineering services. This will ensure potential recipients who were not able to reasonably plan for taking BABAA into account are not unnecessarily disqualified and forced to pursue expensive redesigns.

PRESIDENT
Stan Brown, P.E., PWLF

CHIEF EXECUTIVE OFFICER
Scott D. Grayson, CAE



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Uncertainty and Scale of New BABAA Requirements

It is important to note that while some programs already have a history of compliance with American Iron & Steel requirements and while that means IJJA's investments will support American businesses and jobs in these industries from day one, we should not underestimate the significance of the new domestic preference requirements for construction materials and manufactured goods. Water projects can take years and must meet strict regulations, deadlines and technological standards. As EPA highlighted in the proposed waiver, "the domestic availability of other non-ferrous construction materials and manufactured products incorporated is largely unknown at this time" and absent an appropriate waiver, these requirements risk substantially increasing costs and delaying projects. The types of goods and materials covered by BABAA may be integral aspects of a project and essential to achieving environmental and public health objectives or regulatory compliance.

Time is needed to ascertain what products and materials used in the sector are available domestically, their comparative costs and what modifications upcoming projects may need. Time will also help localities, states, and utilities learn the new requirements which now must be taken into account from the planning and design process forward.

Costs of Mandates

Mandates while well-intentioned can entail complex prescriptive procedures to demonstrate compliance thereby increasing the cost of administration for federally financed projects. Higher costs are likely to erase savings from federal investment, which can force utilities to raise rates to achieve the full cost of service. Communities who lack full-time professional capacity to manage capital improvement projects will bear a disproportionate burden as will their low-income, disadvantaged and underserved populations.

Inconsistent mandates will make it even more difficult for communities and water systems to receive funding and therefore at minimum should be streamlined as much as possible. It is imperative actions taken by the government provide clarity and relief, not contribute to uncertainty that threaten to stall necessary improvements. Having two different sets of BABAA requirements within the same project would create needless confusion and complications. Project managers would be faced with figuring out which set of requirements applied to different aspects of a given project or financing package. The requirements should not be such that they serve as a disincentive to potential applicants for federal assistance. Driving utilities

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away from programs may ironically result in more projects being funded with financial instruments that cost more ultimately for ratepayers - but do not have the environmental, wage and domestic purchasing goals of federal programs. Additionally, holding borrowers to a higher standard of compliance than other recipients of federal assistance, many of them grant recipients, is fundamentally unfair. All federal programs under BABAA should be treated the same under the law.

These challenges will compound existing difficulties caused by workforce shortages, the lingering effects of trade wars, supply chain issues, and inflation. Access to affordable safe drinking water and wastewater services must remain the primary priority of federal investment in water infrastructure along with preventing harmful pollution and restoring water quality. APWA believes that it would be prudent for EPA to follow the lead of other departments and agencies (including DOT, Interior, HUD, and FEMA) and implement a waiver of domestic preference requirements for construction materials and manufactured goods until at least six months after the issue of final comprehensive implementation guidance that clearly defines the rules of compliance.

APWA members pride themselves on being committed to public service by profession and being a resource for federal initiatives is just another way we work to protect our communities. If APWA may be of further assistance, please contact Ryan McManus, APWA Government Affairs Manager, at rmcmanus@apwa.net or 202-218-6727.

Thank you for your time and consideration of these comments.

Sincerely,

Scott D. Grayson, CAE
Chief Executive Officer

Stan Brown, PE, PWLF
APWA President

PRESIDENT
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