



February 3, 2023

The Honorable Radhika Fox
Assistant Administrator, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460
Via: EPA_BABA_Waiver@epa.gov

Re: Request for Comments on Public Interest: Minor (Ferrous) Components of Iron and Steel Products General Applicability Waiver of Section 70914(a) of P.L. 117-58, Build America, Buy America Act, 2021 for U.S. Environmental Protection Agency Financial Assistance Awards

Dear Assistant Administrator Fox,

The Association of State Drinking Water Administrators (ASDWA) and its members would like to commend EPA on its recently proposed waiver for the requirements under Build America, Buy America (BABA) that would allow manufacturers to utilize a small amount of non-domestic iron and steel components within otherwise domestically manufactured iron and steel products. ASDWA's members are busy working with systems to develop grant applications to ensure successful implementation of the Bipartisan Infrastructure Law (BIL) funding, and any actions by EPA through waivers and otherwise to streamline its processes will help to ensure that obtaining this funding is as smooth and straightforward as possible and will reach the communities that need it most.

ASDWA supports the general intent of this waiver that will allow up to five percent of the total material cost to include non-domestically produced miscellaneous minor iron or steel components without further need for a product-specific waiver. This waiver will expedite the process for manufacturers seeking to deem their products BABA-compliant. This, in turn, will benefit assistance recipients seeking BABA-compliant products for their federally funded projects.

ASDWA agrees with EPA that a failure to grant such a waiver creates a "significant administrative burden for the EPA and recipients as both sides must negotiate their iron and steel products on a project-by-project basis, which will increase the cost to the taxpayer, delay the award of assistance agreements and extend projects." ASDWA agrees with EPA that this waiver will help "state, local, tribal, and non-profit recipients to manage their federally funded activities more efficiently." Additionally, ASDWA shares the Agency's concern that absent a

waiver, “recipients might inefficiently expend resources for critical public health protection and environmental infrastructure projects and fail to meet project goals.”

ASDWA continues to recommend that EPA ensure consistency across all the Agency’s infrastructure funding programs for these and future waivers. Navigating this process between the different funding programs can be burdensome and confusing for local communities and water systems. EPA should take every action possible to ensure that obtaining infrastructure funds is as smooth and straightforward as possible.

The funding from the BIL is a significant increase for water infrastructure. This increased funding will assist water systems in addressing much-needed infrastructure improvements, removing lead service lines, and tackling emerging contaminants such as PFAS. But the Federal and state partners must work to lessen the burden and simplify the process for those communities most in need to access these funds. As in previous comments regarding BABA waivers, ASDWA continues to recommend that the Agency take the following actions:

- ASDWA recommends that EPA provide BABA waivers for SRF projects in small communities and recommends that the Agency consider a 10,000-population threshold for these waivers.
- ASDWA has interpreted that the BABA requirements would only apply to projects that utilize the federal cap grant funds and not the additional leveraged DWSRF funds. ASDWA supports this application of BABA but recommends that EPA give a more explicit explanation of what funds must comply with the BABA requirements.
- ASDWA also recommends that EPA consider similar waivers for the Davis-Bacon (DB) Act requirements.

ASDWA continues to support the underlying principles of BABA and Davis-Bacon (DB) as America needs to increase its ability to manufacture construction materials and components. However, in many cases, these requirements make the DWSRF process insurmountable for many small systems that need the funding the most. Small systems with only a few hundred connections face higher costs for even their basic supplies. Requiring BABA and DB for the infrastructure projects these systems so desperately need only exacerbates the economic disadvantage imposed on these systems. In cases where funding is sought to aid the system in returning to compliance with the provisions of the Safe Drinking Water Act (SDWA), those additional requirements become burdensome and drive up the costs of compliance unnecessarily. The main purpose of the DWSRF is to supply funding at reasonable rates and give top priority to assisting those systems with compliance issues. To accomplish this, we shouldn’t drive up the costs of compliance. Some states, such as California, have resorted to utilizing their own funding to aid small and disadvantaged communities to overcome these shortcomings of the federal DWSRF program.

Limited BABA waivers assist States in meeting the Agency’s goal under the Justice40 initiative to work towards ensuring that at least forty percent of the overall benefits from federal

investments go towards disadvantaged communities. The goals of Justice40 and the communities that will benefit should be prioritized over BABA and DB. Statistically, small communities have, on average greater compliance difficulties. The additional costs of compliance with BABA and DB will drive compliance costs up with SDWA and quickly diminish any additional subsidization support offered to the disadvantaged community. The benefits for the country by implementing BABA will result from much larger community projects that will do the overwhelming amount of purchasing for their much more significant investments. Pitting small communities against large community purchasing power will continue the injustice these communities struggle with every day.

ASDWA appreciates the opportunity to comment on these waivers and looks forward to further engagement with EPA as the Agency works to implement similar waivers to ensure that state primacy and funding agencies make the most of the opportunities with BIL funding. If you have any questions regarding these comments, please contact me (aroberson@asdwa.org) or Stephanie Schlea (sschlea@asdwa.org).

Sincerely Yours,



J. Alan Roberson, P.E.
ASDWA Executive Director

Cc: Bruno Piggott – EPA OW
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