



ASSISTANT ADMINISTRATOR FOR WATER

WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Notice of Intent to Adjust the *Amended Public Interest Waiver of Section 70914(a) of P.L. 117-58, Build America, Buy America Act, 2021 for State Revolving Fund and Water Infrastructure Projects that Initiated Design Planning prior to May 14, 2022*

FROM: Jessica L. Kramer

The U.S. Environmental Protection Agency has observed a decrease in the application of the Amended Public Interest Waiver of Section 70914(a) of P.L. 117-58, the Build America, Buy America Act of 2021 for State Revolving Fund and Water Infrastructure Projects that Initiated Design Planning prior to May 14, 2022 (hereafter the Amended Design Planning Waiver), which is understood to reflect a reduction in need for this waiver. Therefore, the EPA intends to revise the Amended Design Planning Waiver and implement a deadline that clearly reflects this reality. After July 31, 2027, no new projects will be able to apply for this Amended Design Planning Waiver. Assistance recipients will still have the option to apply for project-specific individual waivers.

Existing Waiver Coverage: In November 2022, the EPA issued a waiver of the Build America, Buy America Act requirements formally titled, *Public Interest Waiver of Section 70914(a) of P.L. 117-58, Build America, Buy America Act, 2021 for State Revolving Fund and Water Infrastructure Projects that Initiated Design Planning prior to May 14, 2022* (Original Design Planning Waiver). The Original Design Planning Waiver was amended in November 2023 to include water infrastructure projects subject to the state revolving fund requirements, namely those funded through the Community Grants program.

Under the Amended Design Planning Waiver, eligible projects are those receiving funds from fiscal years 2022 or 2023 federal appropriations, which had completed at least one out of eight defined milestones¹ for their projects prior to the effective date of BABA, May 14, 2022. The waiver applies to

¹ Milestones include: 1) submitted preliminary engineering report, or equivalent (to the state or to the assistance recipient); 2) issued a request for proposal or execution of a contract for design or engineering services (regardless of funding source); 3) execution of an assistance agreement – that includes design; 4) for project designed by assistance recipient, documentation of design initiation (such as completed preliminary engineering report); 5) solicitation of construction contract bids; 6) submitted plans and specifications (do not need to be complete) to a state and/or federal funding authority; 7) public referendum or public meeting held regarding proposed project; or 8) evidence of new bonds passed, or other new funding backing secured for project.

covered projects through project completion. Early on, the Amended Design Planning Waiver was a necessary tool that allowed water infrastructure projects that were planned prior to the effective date of BABA, to continue construction and deliver important public health and environmental protection to their communities. With no waiver, the retroactive application of the requirements may have been impractical and costly for projects underway to implement. In addition, significant gaps existed in the domestic availability of products used in water infrastructure projects due, in some part, to supply chain constraints resulting from the economic impacts of the COVID-19 pandemic. The waiver was well justified, appropriate and essential at the time.

Rationale for Adjustment: For years, the EPA has prioritized outreach and education related to the BABA requirements with numerous stakeholders and as a result, their understanding of the requirements has increased. In addition, BABA-compliant products used in water infrastructure projects continue to become more readily available. As a result, the EPA has observed a decrease in the use of the Amended Design Planning Waiver over time. To continue advancing Made in America objectives and the EPA's commitment to implementing the BABA requirements, the EPA intends to adjust the Amended Design Planning Waiver with a deadline of July 31, 2027. After this date, no new projects, for which coverage under the waiver had not already been determined, will be able to apply for the Amended Design Planning Waiver. This adjustment reflects reality and provides clarity to stakeholders by ensuring the Amended Design Planning Waiver is not in effect longer than needed. There will be no impact on projects determined to be covered by the funding authority under this waiver prior to July 31, 2027, which will continue to be covered until the project is completed.

The proposed adjusted Amended Design Planning Waiver will be posted for public comment to the EPA's [BABA webpage](#)² for a 30-day comment period. Commenters will be able to submit comments to a dedicated EPA email address.

² <https://www.epa.gov/baba/build-america-buy-america-baba-act-waivers-open-public-comment>