

DEPARTMENT OF THE INTERIOR
Bureau of Reclamation
and
The U.S. Environmental Protection Agency

General Applicability Non-Availability Waiver
Build America, Buy America Product Waiver: AMI Water Meters

1. Summary

Agency: Department of the Interior (DOI/Department), Bureau of Reclamation (USBR) and the U.S. Environmental Protection Agency

Proposed Waiver: The Department and USBR is joining with the Environmental Protection Agency (EPA) to propose a partial general applicability/nonavailability waiver of the requirements of section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) for Advanced Metering Infrastructure (AMI) water meters used in infrastructure projects funded through USBR and the EPA, while requiring certain components of the water meters to be manufactured in the United States according to the phased implementation schedule below. This waiver is in effect for three (3) years from the date of issue. DOI and EPA propose a phased approach during the waiver period, where, for two years from the date of issue, purchases of AMI meters and all components (the entire “manufactured product”) are waived. At the expiration of the two years [specify date], AMI meter bodies would be required to be domestically manufactured or produced components and would be excluded from the waiver scope. This waiver only applies to products purchased after [the effective date of this waiver] and may not be used for products purchased after the expiration date of the waiver. At the conclusion of the waiver period, USBR and the EPA expect AMI water meters to be manufactured in the United States and their total cost of components to be 55% or greater domestically manufactured or produced.

Waiver type: Nonavailability of domestic products

Waiver level: General Applicability, Product level waiver

Waiver justification summary: There are no AMI water meters manufactured in the United States meeting BABA’s 55% total cost of components domestic content requirement.

Length of the waiver: This waiver is in effect for three (3) years from the date of issue. DOI and EPA propose a phased approach during the waiver period, where, for two years from the date of issue, purchases of AMI meters and all components (the entire “manufactured product”) are waived. At the expiration of the two years [specify date], AMI meter bodies would be required to be domestically manufactured or produced components and would be excluded from the waiver scope. This waiver only applies to products purchased after [the effective date of this waiver] and may not be used for products purchased after the expiration date of the waiver.

Summary of items covered in the waiver:

- AMI water meters.

NAICS: 334514
PSC: 6632

2. Background

The Buy America Preference set forth in section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), requires all iron, steel, manufactured products, and construction materials used for infrastructure projects under Federal financial assistance awards be produced in the United States.

Under section 70914(b), a Federal agency may waive the application of the Buy America Preference, in any case in which it finds that: applying the domestic content procurement preference would be inconsistent with the public interest; types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. All waivers must have a written explanation for the proposed determination; provide a period of not less than 15 calendar days for public comment on the proposed waiver; and submit the proposed waiver to the Office of Management and Budget Made in America Office for review to determine if the waiver is consistent with policy.

3. Description of Covered Items

Manufactured products: AMI water meters collect water usage information. When used as a fixed network across a community, AMI water meters automatically collect and store consumption data, aiding in water conservation and water use efficiency, improved water management, and energy savings. Information provided helps identify high water usage that could indicate leaks, providing time sensitive leak detection alerts. AMI water meter networks reduce water demand by enhancing conservation, reduce energy use/operating costs, and reduce carbon emissions using remote/automated meter reads.

AMI water meters are composed of meter bodies, end points/transmitters, resins, printed circuit boards, meter electronics, batteries, base stations, repeaters and associated equipment. Based on market research completed within the last two years, some manufacturers source the materials for the meter bodies domestically. A few manufacturers indicated that their meter bodies are 100% manufactured or produced within the United States. However, the industry universally sources the end points/transmitters, resins, printed circuit boards, meter electronics, and batteries internationally. As these components are the most expensive parts of the water meter, the meter system as a whole does not meet BABA's 55% of total cost of components domestic content requirement.

Based on the market research described below, there are currently no AMI water meter manufactured domestically that meet BABA requirements.

4. Waiver Justification

Based on cumulative and collaborative market research efforts, USBR and the EPA are proposing a three-year waiver split into two phases. In the first phase, a waiver would be

provided for two years from the date of issue to cover AMI meters and all their components. At the expiration of the two years, AMI meter bodies would be required to be a domestically manufactured or produced component. The second phase for the remaining year of the waiver would cover other AMI water meter components. At the conclusion of the waiver period, USBR and the EPA anticipates that AMI water meters (i.e., bundled with their component parts) will be available as a manufactured product with 55% or more of the components domestically manufactured or produced.

This waiver's purpose is to incentivize production of BABA compliant AMI water meters. Based on stakeholder feedback, DOI and the EPA have identified that significant challenges prevent AMI water meters from being BABA compliant. However, with appropriate market signals, AMI water meters could be BABA compliant by the expiration of the waiver. DOI and the EPA are seeking this waiver specifically to send the appropriate market signals to the AMI water meter manufacturing community. DOI and the EPA's expectation is that AMI water meters be BABA compliant. This waiver also identifies a realistic phased pathway for domestic manufacture, of these products, first by targeting the domestic manufacture of meter bodies, with the second phase for the remaining components of an AMI water meter that are not currently available to be manufactured or produced within the United States. As an incentive, while this waiver is active, manufacturers may still receive the benefit of Federal funding by providing materials to be used under Federal awards, with the phased approach rewarding those manufacturers that take advantage of the waiver period to transition to domestic content.

Anticipated impact if no waiver is issued: USBR provides annual funding for the competitive Water and Energy Efficiency Grant (WEEG) program, which regularly funds AMI water meter projects. As no BABA compliant AMI water meter is available, there is no alternative but for these projects to be covered by a product or project waiver. In FY23 alone, USBR's WEEG program competitively selected water meter grants totaling \$43 million Federal and \$90 million non-Federal funding. This \$134 million investment is expected to result in an annual water savings of over 20,000 acre-feet. Based on historical data, EPA anticipates that at least 10% of all our funded water infrastructure projects will purchase and install AMI water meters. The majority of these will occur through the State Revolving Fund, the Water Infrastructure Finance and Innovation Act program, and other funding programs. As no BABA compliant AMI water meter is available, there is no alternative but for these projects to be covered by a product or project waiver.

If this waiver is not approved, DOI, the EPA, and the Federal grant-making community will miss an opportunity to clearly articulate expectations for creating a domestically manufactured or produced market to the AMI water meter manufacturing community. This could have the impact of slowing the long-term domestic sourcing transition, and curtailing Federal participation in AMI water meter projects, which would weaken support for communities throughout the West that are struggling to conserve their declining water supply.

Market Research to Justify Product Non-Availability Waiver:

From 2022 through 2024, USBR, EPA, and grant recipients conducted market research to assess the availability of domestically manufactured AMI water meters. As a result of this cumulative market research, there is no known manufacturer of AMI water meters, that meet BABA's domestic production requirements.

All manufacturers responsive to market research inquiries stated that they are in the process of evaluating the idea of moving manufacturing to the U.S., but have no immediate plans or timeframes identified. As there are upwards of fifty (50) components to an AMI water meter, evaluating the domestic sourcing of the manufactured product as a whole through the component cost break down is a significant effort. Should key high-cost components of an AMI water meter be manufactured within the U.S. in the future, this could lead to a domestically produced manufactured product meeting the 55% BABA requirement.

Market research feedback has indicated that one component of the AMI meter--the meter bodies-- are manufactured domestically by several manufacturers. USBR and the EPA considered whether an AMI water meter waiver could be targeted at the components such as the internal electronics and end points, rather than the AMI water meter as a whole. USBR and the EPA also considered whether this waiver could be targeted to AMI water meters below a certain size threshold. If several meter bodies are domestically manufactured or produced, perhaps the larger meters would result in a component cost break down meeting BABA's 55% requirements.

USBR convened grant recipients implementing AMI water meter projects to gain feedback on these two potential targeted approaches. Grant recipients provided feedback that AMI meter systems and their components (such as meter bodies and their internal electronics and end points) are not universally compatible. Attempting to retrofit meters with currently available BABA-compliant meter bodies would be a cost prohibitive high-risk effort. Likewise, re-designing meter systems to utilize AMI meters from different manufacturers as one combined meter system is not possible without substantial funding, time, and testing. Most grant projects for AMI water meter system upgrades have already been designed and implemented. Federal funding assists those projects in expanding coverage, updating, or replacing dysfunctional meters. It is not possible to redesign an AMI water meter system without years of planning and million-dollar investments, resulting in an inordinate expenditure of time, effort, and funding, to mitigate the risk of failure because of system wide incompatibilities. Most, if not all, local governments or utilities would not find this risk to reward scenario alluring and would decline Federal funding. Local governments have specific performance metrics for their meter systems and are not able to make sacrifices to the integrity of the system as a whole.

Further, grant recipients provided feedback that, for newly designed AMI water meters, expecting use of currently available BABA-compliant meter bodies is not realistic. BABA-compliant water meter bodies do not appear to be available in sufficient and reasonably available quantities to meet demand, creating long market lead times. USBR and the EPA, therefore, do not consider it appropriate to target this waiver only at internal electronics and end points specifically.

When considering the larger sized meters, grant recipients provided feedback that these meters still do not meet the BABA requirements based on a component cost break down at the 55%

threshold. USBR and the EPA, therefore, do not consider it appropriate to target this waiver at specifically sized meters. Additionally, USBR sought feedback from grant recipients and industry on market readiness to source key high-cost meter components domestically. Chips and batteries used within AMI water meters are sourced internationally with no known transition to domestic manufacture. End point manufacturers have shared that they are actively considering transitioning their factories to the U.S. They are estimating that it will take three years to move the supply chain and establish working factories.

To gain additional industry feedback on materials used in water infrastructure products, such as AMI water meters, the EPA published a Request for Information (RFI) *Request for Information Regarding Products and Categories of Products Used in Water Infrastructure Programs* in the Federal Register on November 20, 2023, which closed on December 20, 2023, EPA-HQ-OW-2023-0396-0001). The RFI requested feedback detailing domestic materials sourcing, market readiness, other product supply considerations, and whether water infrastructure products are manufactured in the U.S. The EPA and USBR examined the 12 comments that provided feedback on the domestic availability of water meters.

In general, commentors noted that manufacturers need time to assess, design, develop, and test new lines of domestically produced products consistent with BABA requirements. Component changes on manufactured goods require re-evaluation periods to reduce major issues in manufacturing. This includes establishing new domestic production facilities, new BABA compliant lines of domestic products, and staffing for the new facilities. Commenters also reported significant concerns with stocking burdens, customer communication issues, and production capacity issues. Commenters noted that there are significant issues related to the domestic sourcing of electronics. Commenters note that there is no support to offset the foreign procurement of the electronics. One commentor shared that they were unlikely to meet the BABA domestic component sourcing requirements within five years, as the effort requires a significant time and funding investment.

Given that it is not possible for all future funded AMI water meter projects to source the meter bodies from the few domestic sources, (for the above described compatibility and market lead times concerns), USBR and the EPA are proposing a time-limited two-year waiver to provide an opportunity for all AMI water meter manufacturers to assess the sourcing of their meter bodies and transition to a domestic supply. At the conclusion of the two-year (first phase) of the waiver, AMI water meter bodies would be required to be domestically manufactured or produced components and be compatible with existing systems.

USBR and the EPA are proposing in the second phase of this waiver to cover components of the AMI water meter, excluding the meter bodies, for an additional year beyond the initial two years of coverage for meter bodies. If end point manufacturers are planning to domestically manufacture their product within three years, it is reasonable to expect that, at the conclusion of the second phase of the waiver, AMI water meters as a whole could be 55% domestically manufactured.

USBR and the EPA consider this waiver to provide a significant market signal and time for manufacturers to analyze current issues and develop strategies to create domestically

manufactured or produced products that are consistent with BABA requirements. This will also give time to assess, design, develop, and test new lines of the domestic products. Responses to the EPA's RFI were generally consistent with the feedback USBR had previously received.

USBR and the EPA consider this waiver's incentive-based approach to be appropriate and fair for both manufacturers that have manufactured or produced some of their AMI water meter components domestically and those that have not prioritized a domestic supply of components prior to the enactment of the Infrastructure Investment and Jobs Act, sometimes referred to as the Bipartisan Infrastructure Law. Manufacturers not sourcing their components domestically will have sufficient and reasonable time to reassess, plan, and implement changes. Manufacturers currently sourcing some of their products domestically will have sufficient and reasonable time to source the high-cost components of AMI water meters domestically. While the industry as a whole manages this transition, USBR and the EPA may continue to fund projects to conserve and efficiently use water resources through the use of AMI water meters. An analysis will be required immediately prior to the conclusion of the waiver period to identify how the AMI water meter industry has shifted in response to changing market conditions.

Expectations for the Agency, Award Recipients, and Industry at the Conclusion of the Waiver:

With this proposed waiver, USBR and the EPA request feedback from the AMI water meter industry on manufacture and supply chain transition plans so that this waiver is appropriately scoped and time limited. USBR and the EPA specifically request input on the viability of domestic manufacturers to purchase domestically produced water meter bodies within two years. USBR and the EPA also request feedback from manufacturers on their plans to apply the component cost test to their water meters to meet the 55% domestic content requirement for domestically produced manufactured goods consistent with BABA's requirements by the conclusion of the second phase of the waiver. Comments identifying difficulties affecting the feasibility of domestically sourcing specific water meter components in an adequate supply to meet demand are particularly helpful. USBR and EPA are requesting public comment on the topic of domestic assembly of AMI meters. Of special interest is whether manufacturers with assembly capabilities can provide estimates and certainty for the potential quantities and product characteristics (such as communications methods, compatibility, and/or leak detection) sought by USBR and EPA funded projects. Feedback is requested on the current capacity of manufacturers to domestically assemble AMI meters and, more specifically, the meter bodies throughout this waiver period. If information gathered through public comment indicates a sufficient supply of meters that can meet domestic assembly requirements but not 55% content requirements, USBR and EPA may further restrict the final waiver to require final assembly of meters in the U.S. and waive only the domestic content requirements. Comments are also requested on the substitutability and compatibility of meter bodies and different meter systems.

USBR and the EPA expect to continue to engage in conversations with grant recipients and other Federal agencies to encourage the AMI water meter manufacturing industry to meet the 55% of total cost domestic content requirement for BABA compliance.

USBR and EPA will review this waiver annually to assess whether it remains necessary. USBR and EPA may, based on the results of that review, terminate or narrow the scope or duration of this waiver, or take such other action deemed appropriate.

5. Assessment of Cost Advantage of a Foreign-Sourced Product

Under OMB Memorandum M–24-02, Federal agencies are expected to assess “whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products” as appropriate before granting a public interest waiver. DOI and the EPA’s analysis has concluded that this assessment is not applicable to this waiver as this waiver is not based on the cost of foreign-sourced products.

6. Solicitation of Comments

Proposed Waiver: This notice posted on August 30, 2024, satisfies the requirement to publish any proposed Build America, Buy America waiver and provide the public with a reasonable period of time for notice and comment. The Department of the Interior and the EPA seek public and industry comment from all interested parties. Relevant information and comments will help the Department and the EPA understand the facts and impacts surrounding this waiver request. This notice will be closed for comments on September 29, 2024. Comments can be sent to DOI_Grants_BuyAmerica_Waiver@ios.doi.gov. Please reference the associated project title in the subject line of the email. Comments received prior to the public comment closing date will be reviewed and considered by DOI and the EPA.

For more information on the Buy America Preference, please reference www.doi.gov/grants/buyamerica or MadeinAmerica.gov and www.epa.gov/cwsrf/build-america-buy-america-baba.