



DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2024-0131]

Pipeline Safety: Waiver of the Build America, Buy America Act Requirements for Gas Service Risers, Gas Service Regulators, and Gas Meters Under the Natural Gas Distribution Infrastructure Safety and Modernization Program

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is waiving the Build America, Buy America (BABA) Act's domestic preference requirements for certain products widely used in natural gas distribution systems on the basis of nonavailability. The waiver will apply to awards obligated on or after the effective date of the final waiver for recipients of funding under the Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) Grant Program and, in the case of awards obligated prior to the effective date, all expenditures for covered products incurred after the effective date. The waiver will expire after three years after the effective date of the final waiver.

DATES: The effective date of the waiver is **[INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The waiver will expire on **January 21, 2028**.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Ms. Shakira Mack, Office of Pipeline Safety, by phone at 202-366-5090, or by e-mail at Shakira.Mack@dot.gov. Office hours for PHMSA are from 8:30 a.m. to 5:00 p.m. EST, Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of this Notice and all background material, along with electronic retrieval help and guidelines, may be viewed online at <https://www.regulations.gov> using the docket number listed above. An electronic copy of this document also may be downloaded from the Office of the Federal Register's website at www.FederalRegister.gov and the Government Publishing Office's website at www.GovInfo.gov.

Background

The NGDISM program was authorized by the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58). The program provides federal funding to municipal- or community-owned natural gas utilities (not including for-profit entities) to repair, rehabilitate, or replace their natural gas distribution pipeline systems or portions thereof, or to acquire equipment to (1) reduce incidents and fatalities and (2) avoid economic losses. The IIJA appropriates \$200 million per year for each of fiscal years (FY) 2022 through 2026 for the NGDISM program (\$1 billion in total). The IIJA provides that two percent of this amount shall be used to pay the administrative expenses of the NGDISM program. Accordingly, the total amount expected to be awarded as grant funding over the five-year period is approximately \$980,000,000. In FY22, PHMSA awarded approximately \$196 million to 37 municipal- and community-owned natural gas utilities across the nation to fund pipeline replacement projects and the purchase of leak- detection equipment. In FY23, PHMSA awarded \$391 million to 65 applicants; and in FY24 PHMSA awarded another \$196 million to 56 applicants. This brings current overall program totals to \$784 million granted to 158 applicants, where funds are rehabilitating the natural gas system or acquiring equipment to improve public safety and reduce economic losses.

PHMSA expects that a very small portion of NGDISM funding (less than about \$1.9 million) would be spent each year on the products waived from BABA requirements.

In the same legislation, Congress also enacted the BABA Act, which provides that “none

of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” See IIJA, Pub. L. 117-58, sec. 70914(a). Under IIJA Section 70914(b), PHMSA has authority to waive the requirements of BABA (1) if a domestic product is unavailable; (2) if using a domestic product would present an unreasonable cost; or (3) if application of BABA would not be in the public interest.

On August 13, 2024, PHMSA issued a Notice of Proposed Nonavailability Waiver of Buy America Requirements for certain products, on the basis of nonavailability, and in accordance with Section 70914(c) of BABA, PHMSA sought public comments on the proposed waiver. The products proposed to be waived included gas service risers and gas meters. The notice also sought comment on the availability of compliant gas service regulators. PHMSA considers these products to be either “iron or steel products” or “manufactured products” under BABA depending on the cost of the iron and steel components incorporated in each product. See 2 CFR 184.3. A more detailed description of each product is provided below:

- *Gas Service Risers:* Service risers are sections of pipe that provide a 90-degree connection between underground gas service lines and aboveground meter assemblies. Risers are made primarily of steel but typically also include polyethylene components and may include a protective sleeve over the polyethylene components. Service risers are manufactured in a variety of sizes and may be rigid or flexible.
- *Gas Meters:* Gas meters are placed outside of a residence or business that utilizes natural gas and allows the utility operator to track how much gas is being used by the residence or business. Gas meters incorporate a variety of components made of different materials.
- *Gas Service Regulators:* Gas service regulators are devices incorporated into a meter assembly designed to allow gas from a higher-pressure service line to enter a residence’s or business’s gas lines at a lower pressure ideal for everyday use.

During its initial market research, PHMSA identified a single company that currently produces BABA-compliant service regulators. Accordingly, PHMSA did not include gas service regulators in the proposed waiver it published on August 13, 2024, as the market research did not support a clear finding of nonavailability. However, some NGDISM recipients expressed concerns about whether a single company would be able to supply the volume of regulators needed by all NGDISM award recipients. As it is difficult to know exactly the anticipated demand for gas service regulators during the life of the NGDISM program, it is also difficult to determine if one company can supply all regulators needed. PHMSA engaged with the company to determine its production capacity for gas service regulators, but PHMSA lacked information on the anticipated demand during the life of the NGDISM program. As gas service regulators are a critical safety component of gas distribution systems, a lack of sufficient supply could unduly delay the safety-critical construction projects funded by the NGDISM program. As a result, PHMSA specifically requested comments from industry on the demand for gas service regulators purchased through the NGDISM program to inform its future consideration of any potential waivers of BABA requirements for service regulators.

Discussion of Public Comments

PHMSA has considered all comments received in the initial 15-day comment period during its consideration of the proposed waiver, as required by section 70914(c)(2) of the IJA. Public comments regarding the NGDISM programmatic waiver were received through August 28, 2024. PHMSA received a total of seven comments on the proposed waiver. The majority of the commenters noted PHMSA's lack of coverage for certain products in the waiver and provided information on the insufficient quantities of certain items that were available and met domestic content requirements. Commenters also noted the significant lag time between order placement and delivery, and limited production capacity, which results in limited or no availability of the product. The ensuing lack of availability would impede or possibly halt any ongoing natural gas system construction. Some of the comments noted supply delays ranging from months to

possibly two years and result in significant overall project construction delays. Public comments also specifically requested a broadened scope to expand the range of gas service anodeless risers, gas meters, gas service regulators, and additional materials, and to extend the waiver duration from three years to five years.

One commenter stated that “PHMSA should require the use of domestically produced aluminum extrusions in the production of gas meters,” opining that PHMSA should mandate aluminum extrusions be used for gas meter manufacture. This proposal is beyond the scope and consideration of “Buy America Preferences for Infrastructure Projects,” 2 CFR 184 (Oct. 1, 2024). This should be addressed on a broader range and scale, along with various technical studies, analyses, and congressional mandates that consider broad industry requirements for aluminum extrusion in the gas meter manufacturing industry. These concerns cannot be addressed within the programmatic waiver for the NGDISM Grants program, which is limited to the program grantees and beyond the scope and purpose of this grant program.

Also, the market share relative to industry is negligible. The 2023 North American Gas Meter Market size was \$3.7 billion.¹ With current NGDISM program awards of approximately 6,000 meters per year, proposed NGDISM spending on gas meters would be approximately \$1.2 million per year. The resulting potential market share of 0.04 percent would not provide significant support to BABA compliance.

In response to PHMSA’s specific request for information about demand for gas service regulators through the NGDISM grant program, commenters representing eligible NDGISM grantees provided an estimated total quantity of 40,911 gas service regulators (both current and projected) during the fiscal year program period (FY 2022 thru FY 2026) and across 30 systems. The average annual market size would be \$1.2 million for anticipated NGDISM projects. This

¹ Global Market Insights. North America Gas Meter Market Size - By Type (Diaphragm Meters, Rotary Meters, Turbine Meters, Ultrasonic Meters, Coriolis Meters), By Technology (Smart, Conventional), By End Use, By Distribution Channel & Forecast, 2024–2032. Global Market Insights. September 2024. <https://www.gminsights.com/industry-analysis/north-america-gas-meter-market>.

would equate to a 0.2 percent market share of a 2024 gas pressure regulator estimated market value of \$552.8 million dollars.² Given this small gas service regulator market share, the waiver would have a negligible effect on both industry and BABA compliance and create impediments to grantees' efforts to enhance safety and reduce economic loss as a result of constricted availability.

The remaining commenters, all potential NGDISM recipients, noted similar concerns.

Specifically, their concerns focused on the timely availability and limited scope of gas service anodeless risers, gas meters, and gas service regulators. This is due to a single sole provider that may not be able to timely meet the concurrent demand from all the various grant projects. This singular provider would be responsible for the influx for various models and quantities; varying geographical delivery locations and delivery dates to meet operator schedules; and most importantly, maintaining continued public safety. Any delays or inability by the single provider could result in noncompliance, loss of use of a basic utility, and public exposure to safety risks from failing equipment. In addition, the limited selection could force various operators to install risers or regulators that are unfamiliar to their technicians or not compatible with their existing operating equipment. This would increase the grantee's costs by requiring the purchase of new associated compatible equipment and additional training, and increase the risk of operator error on new and unfamiliar equipment.

One commenter noted concerns regarding the domestic availability of additional products (transition fittings, electro-fusion tapping tees, lockwing valves, magnesium anodes, service adapters, curb valves, caps, couplings, and stiffeners) and suggested increasing the waiver duration from three to five years. Additional materials may be considered in future waivers.

The proposed waiver facilitated a broad range of interest and input from the public and other stakeholders, and PHMSA greatly appreciates the robust feedback from members of the

² FactMR. Gas Pressure Regulators Market Outlook (2024 to 2034). *Fact MR*. October 2024. <https://www.factmr.com/report/gas-pressure-regulator-market>.

public. The comments are available on the docket at <https://www.regulations.gov>, Docket (PHMSA-2024-0131).

Summary of Changes in the Final Waiver

PHMSA is making two changes from the proposed waiver in response to the information received during the public comment period. First, PHMSA is clarifying that all types of risers are included in the waiver. This directly addresses concerns regarding the availability of BABA compliant gas service risers. Secondly, PHMSA is including gas service regulators in this waiver. Based on responses to questions that PHMSA posed regarding the availability of sufficient quantities of compliant gas service regulators, PHMSA finds that the availability and appropriate selection of gas service regulators that are BABA compliant are not available in timely and sufficient quantities to meet NGDISM grantees' operating conditions and project schedule requirements. Therefore, PHMSA has added gas service regulators. The waiver for meters is unchanged from the proposed waiver. Public comments to the proposed waiver supported including meters and no changes for meters have been made in the final waiver.

Final Waiver

Based on its review of the waiver request, and in consideration of comments received on the proposed waiver, PHMSA has determined that gas service risers, gas meters, and gas service regulators are not manufactured in the United States in sufficient and reasonably available quantities. PHMSA is waiving BABA requirements for gas service risers, gas meters, and gas service regulators. The waiver will apply to obligations made on or after the effective date of the final waiver for recipients of funding under the NGDISM Grant Program and, in the case of awards obligated prior to the effective date, all expenditures for covered products incurred after the effective date and will expire after three years.

Issued in Washington, D.C., under authority delegated in 49 CFR 1.97.

Tristan H. Brown,

Deputy Administrator.

