



DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2024-0152]

Pipeline Safety: Project-Specific Waiver of the Build America, Buy America Act Requirements for Certain Products Used by Philadelphia Gas Works under the Natural Gas Distribution Infrastructure Safety and Modernization Grant 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 that Philadelphia Gas Works (PGW) needs for its Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) grant project due to lack of availability, unreasonable cost, or public good. The waiver would exempt the following products used in PGW's project from BABA requirements on the basis of nonavailability: electro-fusion tapping tees, anodeless risers, transition fittings, lockwing valves, magnesium anodes, service adapters, curb valves, caps, couplings, and stiffeners.

DATES: The effective date of the waiver is **[INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Louis Cardenas, Office of Pipeline Safety, by phone at 832-208-0132 or by e-mail at Louis.Cardenas@dot.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

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

Background

The NGDISM grant 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 grant 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 grant program. Accordingly, the total amount expected to be awarded as grant funding over the five-year period is \$980,000,000.

Congress also enacted the BABA Act, providing 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." 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.

Across three fiscal years (FY2022, FY2023, and FY2024) PGW has been awarded \$125 million in NGDISM grant funding to help fund the replacement of "at-risk" natural gas cast iron pipe within the city of Philadelphia as part of its "Citywide Neighborhood Safety and

Modernization” project. Of the \$125 million awarded for this project the materials covered by the waiver only represent an estimated 0.11% or \$140,201. The project, which will be located entirely within Philadelphia’s historically disadvantaged neighborhoods, will replace approximately 67 miles of aging cast iron, ductile iron, and unprotected steel pipelines with modern polyethylene plastic pipe that is less susceptible to breakage due to earth movement—the biggest threat to PGW’s existing cast iron pipelines, especially during the winter months.

Proposed Waiver and Request for Comments

On September 27, 2024, PHMSA published a Notice of Proposed Project-Specific Waiver of the BABA Act Requirements for Certain Products Used by Philadelphia Gas Works and Request for Comment (89 FR 79360) for certain products on the basis of nonavailability.

The specific essential products PGW sought a waiver for are listed below:

- *Electro-fusion tapping tees*: Electro-fusion tapping tees are rigid sections of polyethylene pipe that are fused to the top of an existing polyethylene pipeline. They are used to provide a branch outlet from a gas main to a service line. (NAICS: 326122)
- *Anodeless risers*: Anodeless risers are sections of pipe that provide a 90-degree connection between underground gas service lines and aboveground meter assemblies. Risers are typically made of steel but may also include polyethylene components and may include a protective sleeve over the polyethylene components. Anodeless risers are manufactured in a variety of sizes and may be rigid or flexible. (NAICS: 33296)
- *Transition fittings*: Transition fittings are adapters that facilitate below-grade transition from polyethylene pipe to steel pipe before it exits the ground. The steel section of the fitting is epoxy-coated for corrosion resistance. Transition fittings incorporate both steel and polyethylene components. (NAICS: 332919)
- *Lockwing valves*: Lockwing valves are installed at the “head” of a service line, upstream of a meter assembly, and are used to stop or start the flow of gas. They are lockable to

resist tampering or accidental opening of the valve. They are typically made of brass.

(NAICS: 332919)

- *Magnesium anodes*: Magnesium anodes are blocks of magnesium that are attached to steel pipe in order to protect against corrosion damage. (NAICS: 335999)
- *Service adapters*: Service adapters are threaded fittings used on a meter set assembly above ground. They are typically made of steel and are used to connect two pieces of steel pipe in a meter assembly. (NAICS: 332919)
- *Curb valves*: Curb valves are shut-off valves installed in a readily accessible outside location (such as in the footway). They are used to control the gas upstream of a gas meter, but downstream of the main service tee in the street. Curb valves can be made of either polyethylene or steel. PGW requires the use of polyethylene curb valves in its system. Accordingly, PHMSA proposes to waive BABA requirements for polyethylene curb valves. (NAICS: 326122)
- *Caps*: Caps are added to a pipeline in order to close off sections of the pipeline or to cap off dead-end lines. Caps can be made of either polyethylene or steel, depending on the material of the pipe capped off. PGW is not able to find a BABA-compliant source for steel caps. Accordingly, PHMSA proposes to waive BABA requirements for steel caps. (NAICS: 332919)
- *Couplings*: Couplings can be used to connect two sections of pipe made from either polyethylene, steel, ductile iron, or cast iron. PGW requires the use of steel couplings on its distribution system. Accordingly, PHMSA proposes to waive BABA requirements for couplings made of steel. (NAICS: 332919)
- *Stiffeners*: Stiffeners are inserted into plastic pipe alongside couplings to support the pipe, mitigate stress, and provide a long-lasting seal. (NAICS: 326122)

To conduct market research, PGW initially engaged with its normal suppliers of gas distribution pipeline parts. Eight of PGW's normal suppliers indicated that they could provide

BABA-compliant products but were not willing to certify to BABA compliance. One of PGW's alternate suppliers indicated it could provide BABA-compliant caps, couplings, and stiffeners, albeit at an increased cost and a long lead time, causing an estimated 36-week delay in PGW's construction schedule that is untenable for this project. PGW also reached out to neighboring gas utilities to inquire about their sources but was likewise unable to locate a domestic source.

On April 10, 2024, in an effort to locate additional alternative suppliers, PGW issued a Request for Quotation ("RFQ") titled "One Time Purchase of BABA Compliant Alternatives." The RFQ was publicly posted to PGW's Procurement website, and was open from April 10, 2024, until April 29, 2024. PGW invited 80 suppliers and manufacturers to submit bids. As a result of the RFQ, PGW identified BABA-compliant alternatives for eight products for which PGW was not previously able to find domestic sources. However, PGW still was not able to find suitable or readily available alternatives for the 10 products proposed to be waived herein.

Discussion of Public Comments

PHMSA has reviewed the single supportive comment received in the initial 15-day comment period during our consideration of the proposed waiver, as required by section 70914(c)(2) of the IIA. The public comment regarding the PGW project specific NGDISM waiver was received by October 15, 2024. The commenter noted the potential need for the same products and that the commenter "fully support[s] the granting of this waiver to Philadelphia Gas Works."

Summary of Changes in the Proposed Waiver

There are no changes to the proposed Waiver. As there was a single public comment in support of this waiver, there are no public comments that require changes in the proposed waiver.

Final Waiver

Based on its review of the waiver request, and in consideration of the supportive comment received on the proposed waiver, PHMSA is waiving the requirements of BABA for

the above listed products for PGW's "Citywide Neighborhood Safety and Modernization" project funded by NGDISM grant funds. The waiver is applicable only to PGW's project; it is not applicable to any other NGDISM grant recipient's projects. The waiver is effective from the date of the final waiver through the period of performance and closeout of PHMSA's financial assistance for the project, which is estimated to be June 30, 2029.

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

Tristan H. Brown,

Deputy Administrator.

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