

the merits of a petition for inconsequentiality is determining whether the noncompliance itself is inconsequential to safety.” Tesla states this statute requires NHTSA to “base its decision on the petition squarely upon the inconsequential nature of the noncompliance. Any perceived benefit of issuing Part 577 letters via first-class mail to affected vehicle owners has no bearing on whether the noncompliance has an impact on motor vehicle safety and is not relevant to assessing the merits of this petition.”

Tesla concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Tesla no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Tesla notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

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DEPARTMENT OF TRANSPORTATION

[Docket No. PHMSA-2024-0152]

Pipeline Safety: Proposed Project-Specific Waiver of the Build America, Buy America Act Requirements for Certain Products Used by Philadelphia Gas Works

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

ACTION: Notice; request for comments.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is proposing to waive 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. The proposed 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, locking valves, magnesium anodes, service adapters, curb valves, caps, couplings, and stiffeners. In accordance with section 70914(c) of BABA, PHMSA is seeking public comments on the proposed waiver.

DATES: Comments must be received by October 15, 2024.

ADDRESSES: Please submit your comments to the Federal eRulemaking Portal at <http://www.regulations.gov>, Docket No. PHMSA-2024-0152, and follow the online instructions for submitting comments.

Instructions: You must include the agency name and docket number at the beginning of your comments. Except as described below under the heading “Confidential Business Information,” all submissions received, including any personal information provided, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review the U.S. Department of Transportation’s complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Brandon Hollingshead, PHMSA Office of the Chief Counsel, 202-366-4400, or via email at brandon.hollingshead@dot.gov. Office hours for PHMSA are from 8:30 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of this Notice, all comments received on this Notice, and all background material may be viewed online at <http://www.regulations.gov> using the docket number listed above. Electronic retrieval help and guidelines are also available at <http://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 and the

Government Publishing Office’s website at: www.GovInfo.gov.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. You may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as “Confidential”; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this Notice. Submissions containing CBI should be sent to: Mr. Brandon Hollingshead, PHMSA, 1200 New Jersey Avenue SE, E26-316, Washington, DC 20590. Any comment submissions that PHMSA receives that are not specifically designated as CBI will be placed in the public docket for this matter.

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 2 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 \$980,000,000. In FY2022, 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.

Congress also enacted the Build America, Buy America Act (BABA), 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.” IJJA, Public Law 117–58, section 70914(a). Under IJJA 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.

In FY2022, PGW was awarded \$10 million in NGDISM grant funding to help fund the replacement of “at-risk” cast iron natural gas main in historically disadvantaged census tracts within the City of Philadelphia as part of its “Citywide Neighborhood Safety and Modernization” project. The project, which will be located entirely within Philadelphia’s historically disadvantaged census tracts, will replace approximately 6 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.

Justification for Waiver

PGW seeks a waiver of BABA requirements for certain products on the basis of nonavailability. The specific essential products PGW seeks 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 which would cause an estimated 36-week delay in PGW’s construction schedule, which is untenable for PGW’s project. PGW also reached out to neighboring gas utilities to inquire about their sources but was likewise unable to locate a domestic source for these products that way.

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 8 types of 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.

On these bases, PHMSA has preliminarily determined that these products are not manufactured in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

Proposed Waiver and Request for Comments

PHMSA proposes to waive 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 would be applicable only to PGW’s project; it would not be applicable to any other NGDISM grant recipient’s projects. The proposed waiver would be effective from the effective 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. If the sources of Federal financial assistance applied to the project are changed, PHMSA will consider whether the waiver continues to be warranted, taking into account the project’s development status at that time and any changes in market conditions for the products subject to the waiver.

PGW was awarded \$10 million in NGDISM grant funding in FY2022. However, labor costs, rather than materials costs, typically make up the majority of costs in pipeline replacement projects. PGW estimates

that only \$856,941 of the total project budget will be spent on materials. Out of this amount, PGW anticipates that only about \$140,201 would be spent on the products proposed to be waived herein—or 16 percent of PGW’s materials costs. This \$140,201 is further split across ten different products.

By contrast, the proposed waiver would have a significant impact on PGW’s ability to successfully complete its NGDISM projects. Absent the proposed waiver, PGW will not be able to comply with BABA requirements for the above listed products, either because PGW’s market research was not able to identify any domestic sources, or it is not feasible for PGW to utilize the domestic source it did identify due to the extreme construction delays that would result.

While PGW did find a domestic source for caps, couplings, and stiffeners, the manufacturer indicated that it would need a lead time of 14- to 16-weeks from the date of order before it could supply BABA-compliant versions of these products to PGW. To ensure the safety of the public, PGW would first need to order a sample of the new products to conduct quality control testing, which PGW indicated could take up to 4 weeks. If the new products pass quality control testing, PGW would then need to place a full order for the new products, resulting in another 14- to 16-week lead time to receive them. The entire process, from initial ordering of sample products to receipt and acceptance of the full order, could result in a construction delay of up to 36 weeks. Distribution gas construction cannot proceed without these primary components and the alternative extended lead time prolongs the time of exposure to potential leaks and threats to life and property. A delayed construction schedule could result in safety impacts for PGW’s customers, especially those located in five USDOT-designated historically disadvantaged neighborhoods within the project area. PGW estimates that such a delay would push its projected FY2025 project completion to the summer of FY2026, subjecting these customers to an additional winter season with sag service by cast iron pipes—a time when gas leaks are more likely to occur due to frost heave and other winter ground movement. Combined with the age of PGW’s cast iron pipelines in these neighborhoods, this would create an appreciably increased risk to residents in these neighborhoods.

Under OMB Memorandum M–24–02, 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. PHMSA’s analysis has concluded that this assessment is not applicable to this waiver, as it is being proposed on the basis of nonavailability, rather than public interest or unreasonable cost.

PHMSA will consider all comments received in the initial 15-day comment period during our consideration of the proposed waiver, as required by section 70914(c)(2) of the IIJA. Comments received after this period, but before notice of our finding is published in the **Federal Register**, will be considered to the extent practicable.

Issued in Washington, DC, on September 23, 2024, under authority delegated in 49 CFR 1.97.

Tristan H. Brown,

Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2024–0151]

Pipeline Safety: Proposed Project-Specific Waiver of the Build America, Buy America Act Requirements for City Utilities of Springfield, Missouri for Certain Products

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

ACTION: Notice; request for comments.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to waive the Build America, Buy America (BABA) Act’s domestic preference requirements for certain products that City Utilities of Springfield (City Utilities) will use in its Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) grant project. The proposed waiver would exempt the following products used in City Utilities’ project from BABA requirements on the basis of nonavailability: locator markers; meter stops with insulated unions; magnesium anodes; 1A meter swivels, nuts, and washers; and direct bury lugs. In accordance with section 70914(c) of BABA, PHMSA is seeking public comments on the proposed waiver.

DATES: Comments must be received by October 15, 2024.

ADDRESSES: Please submit your comments to the Federal eRulemaking Portal at <http://www.regulations.gov>, Docket No. PHMSA–2024–0151, and follow the online instructions for submitting comments.

Instructions: You must include the agency name and docket number at the beginning of your comments. Except as described below under the heading “Confidential Business Information,” all submissions received, including any personal information provided, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review the U.S. Department of Transportation’s complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, (65 FR 19477).

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