



- ADJUST TEXT SIZE +

EPA Waives 'Buy American' Rules For Some Stimulus Water Projects

EPA is waiving the economic stimulus law's "Buy American" procurement requirements to allow some already-funded water infrastructure projects to refinance loans to access the more attractive financing options the stimulus law provides.

The waiver does not apply to projects that have not yet been funded or were funded prior to the start of the current fiscal year last October, some of which are facing delays due to the law's procurement rules. But it is the agency's first formal step to provide flexibility to the "Buy American" requirement that states and industry say is difficult, if not impossible, to meet.

EPA is "granting a nationwide waiver of the Buy American requirements" of the stimulus bill "for eligible projects for which debt was incurred on or after October 1, 2008 and before February 17, 2009" -- the day President Obama signed the legislation, according to [a notice](#) scheduled for publication in the *Federal Register* April 7.

SRF funding in the stimulus bill allows the \$4 billion for clean water projects and \$2 billion for drinking water projects to be retroactively applied to projects that received SRF loans after Oct. 1, for instance as a grant that pays back a traditional SRF loan already incurred.

But the law's "Buy American" provision, contained in section 1605, requires all procurement to meet a 100-percent domestic content requirement, prompting concern because only a limited amount of water infrastructure equipment and materials is manufactured in the United States, sources say.

Many state officials have also been concerned because EPA has not issued guidance for how to implement the procurement requirements, including how to seek waivers -- which the law allows if there are insufficient American supplies, if the use of American supplies will increase the cost of the project by more than 25 percent or if granting the waiver is in the public interest.

The issue is particularly complicated because many state and local governments ramped up their efforts to initiate projects late last year as Congress debated stimulus legislation but were unprepared for the "Buy American" requirements, which Congress added during its consideration of the package.

EPA says in the *Federal Register* notice the procurement requirement will delay states that receive SRF money from distributing the funds to municipalities that incurred debts after the start of the fiscal year through the stimulus law's enactment Feb. 17.

Early versions of the stimulus bill had allowed local governments to refinance projects that already had received SRF money. For instance, on a Feb. 2 Webcast about the House-passed version of the stimulus bill, EPA wastewater office chief Jim Hanlon said that there was no limitation on how far back municipalities could go to use stimulus dollars to refinance current SRF projects.

But the final version of the bill limited the refinancing option to debts incurred after Oct. 1, limiting SRF managers' ability to take advantage of the stimulus law's "window" to refinance existing projects. The industry source says since enactment of the law, SRF managers had been told the stimulus bill's additional requirements would not apply to projects that received SRF loans between Oct. 1 and Feb. 17 -- loans now eligible for

attractive refinancing with stimulus bill dollars but begun before the stimulus bill's requirements were known.

The industry source says stakeholders see the "window" as an opportunity to refinance projects without the stimulus bill's strings and at better interest rates.

To allow SRF managers to access the stimulus funds, EPA is exercising authority in the law to waive the procurement requirement, citing authority contained in section 1605. EPA says in the *Federal Register* notice that applying the requirements to projects already started would entail "time-consuming delays and thus displace the 'shovel ready' status of these projects."

"This would frustrate Congress' specific and explicit intent to allow for the use of [stimulus] funds to refinance those projects through the SRFs, as well as for expeditious construction generally," EPA says in justifying the waiver.

Although EPA has urged the White House Office of Management & Budget (OMB) for weeks to loosen the "Buy American" requirements in its guidance, the agency's waiver is the first official action suggesting it will seek to ameliorate the requirements for stimulus projects.

Release of the notice, which was signed by acting EPA water chief Michael Shapiro April 1, comes as EPA Administrator Lisa Jackson traveled to Albany, NY, April 3 to announce that the agency is distributing \$430 million to the Empire State from the stimulus' SRF funds. EPA also announced that it is distributing stimulus' SRF funds to several other states, including West Virginia (\$48.8 million), Kansas (\$19.5 million), Nebraska (\$39.5 million), North Carolina (\$70.7 million), and Kentucky (\$49.9 million).

Meanwhile, OMB released interim guidance April 3 defining when "manufactured goods" meet the law's requirement that projects must utilize American-made "iron, steel, and manufactured goods."

EPA, states and industry officials have worried that OMB could define "manufactured goods" too broadly, making it more difficult for SRF projects to procure enough domestic-manufactured goods to meet the law's requirements.

OMB, in its [April 3 interim guidance](#), defines the term broadly to include any goods "[p]rocessed into a specific form and shape" or "[c]ombined with other raw material to create a material that has different properties than the properties of the individual raw materials." However, the guidance also states that "components or subcomponents" produced abroad may be included in American-made goods whose final manufacturing takes place domestically.

The industry source says the OMB definition is a mixed bag because the OMB definition is "about as broad as it could be," but it is also "very welcome news" that OMB's guidance allowed foreign "components and subcomponents" in American-made "manufactured goods." -- *Jonathan Strong*

462009_waiver