

**BEFORE THE
UNITED STATES OFFICE OF FEDERAL FINANCIAL MANAGEMENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C.**

Proposed Rule: Guidance for Grants and
Agreements

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Docket No. OMB-2023-02617
OMB-2023-0004

COMMENTS

**FILED BY
AMERICAN PUBLIC GAS ASSOCIATION**

March 13, 2023

The American Public Gas Association (APGA) submits these comments for consideration by the Office of Management and Budget (OMB) regarding the notice and request for comment on the proposed Guidance for Grants and Agreements (Proposed Guidance)¹ as a part of the implementation of the Build America, Buy America Act (BABA) contained in the Infrastructure Investment and Jobs Act of 2021 (IIJA).

APGA is the trade association representing more than 730 communities across the U.S. that own and operate their retail natural gas distribution entities. These include not-for-profit gas distribution systems owned by municipalities and other local government entities, all accountable to the citizens they serve.

The IIJA established the Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) grant program through the Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA). The grant funding is to be "made available to a municipality or community owned utility (not including for-profit entities) to repair, rehabilitate, or replace its natural gas distribution pipeline systems or portions thereof or to acquire equipment to (1) reduce incidents and fatalities and (2) to avoid economic losses." The 2022 Notice of Funding Opportunity closed on August 8, 2022, and applicants are awaiting the announcement of the 2022 grant winners.

APGA commends Congress, DOT, and PHMSA on the creation and implementation of this important grant program. Pipeline safety is the top priority for APGA members and all community and publicly owned natural gas distribution systems. Publicly owned natural gas systems face unique challenges in obtaining funds to support the accelerated repair and replacement of distribution system infrastructure. Through the NGDISM grant program, public gas systems will address numerous pipeline safety enhancing actions identified through their integrity management programs and will purchase modernized leak detection equipment for their leak detection and repair programs.

Regarding the Proposed Guidance, APGA supports the comments submitted by the U.S. Chamber of Commerce and offers the following specific comments from the perspective of publicly and community owned natural gas utility systems.

There are specific materials very common to gas distribution systems that have BABA compliance challenges. APGA thanks OMB for outlining the various types of Public Interest Waivers in its Memorandum for Heads of Executive Departments and Agencies (M-22-11).² APGA recommends that PHMSA apply for – and OMB grants – a De Minimis waiver for the NGDISM program. In the examples of De Minimis Waivers, OMB describes that "agencies may consider adopting an agency-wide public interest waiver that sets a de minimis [sic] threshold, for example, of 5 percent of project costs up to a maximum of \$1,000,000." Many APGA members who applied for the NGDISM grants for pipeline replacement projects estimate that their total material costs will be less than 5% of their full project costs, meaning the cost of purchasing materials with Made in America law compliance challenges will fall well below that example threshold. While other applicants will spend a higher percentage of their project costs on materials, the costs for materials with Made in America compliance challenges will still be relatively small. Below is a list of commonly used manufactured and construction materials in various natural gas distribution projects with such compliance challenges:

Example Materials:

- Anodeless Risers for Gas Distribution Meter Sets

¹ Notification of proposed guidance: Guidance for Grants and Agreements, 88 Fed. Reg. 8374 (February 9, 2023).

² <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>

- Polyethylene (PE) fittings, including curb valves, couplings, tees, 45's, 90's, Caps, etc.
- Polyethylene (PE) to Steel Transitions
- Direct Bury Splice Lugs for Tracer Wire
- Service Regulators
- Gas Meter Swivels/Spuds
- Large steel valves (12" / 16") for Gas Distribution Service
- Hot Tap Fittings
- Electrofusion Fittings (Source of Copper Wire in Fitting)
- Pressure Correctors
- Encoder, Receiver, Transmitter (ERT) Devices
- Gas Meters
- Mooney Regulators
- Cast Iron Valve Housings & Lids
- Magnesium Anodes
- Malleable Black Iron Fittings (Ells, Bushings, Unions, etc.)
- Steel Pipe Nipples
- Black Iron Pipe
- Copper Tracer Wire (Source of Copper to Make the Wire)

APGA also offers the following responses to OMB's questions in the request for comments.

Question #1 – Cost of Components

APGA supports the definition of "Cost of components" as defined by the Federal Acquisition Regulation (FAR) at 48 CFR 25.003. Publicly owned natural gas utilities or their construction contractors will be purchasing the components listed above directly from vendors or suppliers. Therefore, their realized costs will already include the transportation and applicable duty costs. However, APGA notes that the use of this guidance expands beyond federal contracted projects to also include projects funded through federal grants. In those situations, the grant recipient is not a federal contractor (or manufacturer), but instead an independent entity. A more generic term would allow the guidance to have more broad applicability and would reduce confusion about its intended application.

Question # 9 – Aggregates

APGA believes it is critical that OMB continue the categorization of aggregates as Excluded Materials and continue to exclude them from BABA preference requirements. The most common application of these aggregates for utilities is in roadway paving. If OMB applies BABA preferences to paving materials, the cost of paving materials will increase - unnecessarily increasing the cost of these important federally funded safety projects. Congress was clear in its directive to avoid imposing domestic sourcing requirements on these materials.

APGA looks forward to continued collaboration with OMB and PHMSA on the success of the NGDISM grant program. APGA thanks the Made in America Office for providing guidance on Made in America compliance and supports its mission to "increase reliance on domestic supply chains and ultimately reduce the need to spend taxpayer dollars on foreign-made goods."

Respectfully Submitted,

Date: March 13, 2023

A handwritten signature in cursive script, reading "Erin C. Kurilla".

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