The City clarified that NSF 61 compliance standards supersede certain components of the project specifications. In particular, the pump case, motor housing, and impeller are required to be constructed of stainless steel, and the seals are required to be fabricated of Viton or EPDM polymer. The City also indicated that the pump is not required to be NSF 61 Standard certified, but is required to have wetted components constructed of materials such as stainless steel that would not leach hazardous materials into the drinking water. The specifications also identified four acceptable manufacturers: Flygt, Fairbanks Morse, Wilo EMU, and Hydromatic. The City contacted all four manufacturers and confirmed that they could not provide a pump manufactured in the U.S. that meets the project specifications.

On the basis of additional research conducted by EPA Region 6, there does not appear to be any domestic 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances that would meet the City’s technical specifications. EPA’s national contractor prepared a technical assessment report based on the waiver request submittal. The report confirmed the waiver applicant’s claim that there is no American-made 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances.

EPA has also evaluated the City’s request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at CFR § 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as “late” if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says “the award official may deny the request.” For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the public interest, EPA could consider granting a waiver.

In this case, there are no U.S. manufacturers that meet the City’s project specification for this 5 HP non-clog submersible pump with NSF compliant wetted parts and appurtenances. The waiver request is
submitted after the contract date because the specification in the contract documents for this submersible pump named four U.S. manufacturers as potential bidders. It was unknown at the time that these four U.S. manufacturers could not completely meet the Buy American provision because the specification required the pump be completely constructed of NSF approved materials. This situation resulted from the lack of reasonably foreseeable circumstances, since the pump manufacturers originally assumed they could meet the specification before the bid of this project. There is no indication that the City failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. EPA will consider the City’s waiver request, a foreseeable late request, as though it had been timely made since there is no gain by the City and no loss by the government due to the late request. The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the “American Recovery and Reinvestment Act of 2009,” defines reasonably available quantity as “the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.” The City has incorporated specific technical design requirements for installation of pump in its potable drinking water system. Therefore, it meets the requirements of the “satisfactory quality” criterion for requesting a waiver from the Buy American provisions of Public Law 111–5.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure, not to delay projects that would stimulate economic recovery in part by funding current infrastructure, not to delay projects that would meet the project specifications. EPA will consider the City’s waiver request, a foreseeable late request, as though it had been timely made since there is no gain by the City and no loss by the government due to the late request. The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the “American Recovery and Reinvestment Act of 2009.” The basis for this project waiver is the authorization provided in ARRA, Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the City’s technical specifications, a waiver from the Buy American requirement is justified.

Therefore, it meets the requirements of the “satisfactory quality” criterion for requesting a waiver from the Buy American provisions of Public Law 111–5.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are “shovel ready” by requiring utilities, such as the City, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the “shovel ready” status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

The Region 6 Water Quality Protection Division has reviewed this waiver request, and has determined that the supporting documentation provided by the City is sufficient to meet the criteria listed under ARRA, Section 1605(b), Office of Management and Budget (OMB) regulations at 2 CFR 176.60–176.170, and in the April 28, 2009, memorandum, Implementation of Buy American provisions of Public Law 111–5, the “American Recovery and Reinvestment Act of 2009.” The basis for this project waiver is the authorization provided in ARRA, Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the City’s technical specifications, a waiver from the Buy American requirement is justified.

EPA headquarters’ March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the City is hereby granted a waiver from the Buy American requirements of ARRA, Section 1605(a) of Public Law 111–5 for the purchase of a 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances, using ARRA funds, as specified in the City’s request. This supplementary information constitutes the detailed written justification required by ARRA, Section 1605(c), for waivers “based on a finding under subsection (b).”


Dated: March 8, 2011.

Al Armendariz,
Regional Administrator, U.S. Environmental Protection Agency, Region 6.

[FR Doc. 2011–7606 Filed 3–30–11; 8:45 am]
BILLING CODE 6550–50–P

FEDERAL COMMUNICATIONS COMMISSION
Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 21, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 31, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or e-mail judith.b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION: OMB Control Number: 3060–0805. Title: Section 90.527, Regional Plan Requirements; Section 90.523, Eligibility; and Section 90.1211, Regional Plan Shared Use of 4.9 GHz. Form No.: N/A. Type of Review: Revision of a currently approved collection. Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government. Number of Respondents and Responses: 20,516 respondents, 20,516 responses. Estimated Time per Response: .5 hours—200 hours.