

Build America, Buy America Act Requirements

Shannon Fisher, PE
DWSRF Program Manager

Bryan Schmitt, PE
DWSRF Engineer



Agenda

- Introduction to BABA
- Covered products
- Demonstrating compliance
- Waivers

Where Does BABA Come From?

The Build America, Buy America (BABA) Act is part of the Infrastructure Investment and Jobs Act (IIJA).

- Applies to all federal funds for infrastructure projects, including the State Revolving Fund (SRF) programs
- Not limited to just IIJA funds (will continue after IIJA funds are gone)

When Must SRF Projects Comply?

All SRF projects receiving emerging contaminants funding and lead funding must comply with BABA.

For all other projects, SRF programs can choose a subset of loans in an amount equal to their capitalization grant (equivalency projects) to meet BABA. The remaining projects would only have to comply with American Iron and Steel (AIS) requirements.

SRF programs can be strategic about which projects they choose.

When Must Projects Comply?

Projects with mechanical and electrical components may have trouble meeting BABA. North Dakota tries to avoid applying BABA to water treatment plant projects, for example.

Contact the SRF program to find out if BABA will apply.

BABA is likely unavoidable for certain grants (Emerging Contaminants in Small and Disadvantaged Communities).

North Dakota BABA Projects

| Year | Number of Projects |
|------|---|
| 2022 | 0 (all projects qualified for adjustment period waiver) |
| 2023 | 3 (other projects qualified for adjustment period waiver) |
| 2024 | 12 (adjustment period waiver no longer available) |

Covered Products

| Iron and Steel | Construction Materials | Manufactured Products |
|--|---|---|
| Rebar Manhole covers & other castings Valves Hydrants Pipe Flanges Pipe clamps and restraints Access hatches Doors Stairs Fencing Drainage grates | Non-ferrous metals Plastic & polymer-based products Lumber Drywall Glass Fiber optic cable Optical fiber Engineered wood | Chemical feed equipment Variable frequency drives Filters HVAC Laboratory equipment Controls Electrical conduit Generators Lighting fixtures Motorized doors Paint and coatings |

See EPA's November 3, 2022 guidance for a more exhaustive list: <https://www.epa.gov/system/files/documents/2022-11/OW-BABA-Implementation-Procedures-Final-November-2022.pdf>

Iron and Steel

Includes items that are predominantly iron or steel, or a combination of the two materials.

All manufacturing processes, from the initial melting stage through the application of coatings, must occur in the United States.



Construction Materials

Construction materials are intended to consist of only one of the listed materials.

If a listed construction material is combined with another, or with a material that is not listed as a construction material, it should be classified as a manufactured product.

Coatings applied to a construction material as part of the manufacturing process are not required to be domestic.

Manufactured Products

A product that has been processed into a specific form and shape, or combined with other products with different properties than the individual product

Cost of components that are mined, produced, or manufactured in the United States must be greater than 55% of the total cost of all components of the manufactured product. Manufacturers are responsible for assessing and documenting BABA compliance for their product(s)

If it's not an iron and steel product or a construction material, it's likely a manufactured product

What is Not Covered?

Cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.



Compliance Letter

Five required components:

- Specific project name
- Mention “BABA” or “AIS”
- Specific product(s)
- Manufacturing location(s)
- Signature of company representative

The following information is provided as a sample letter of certification for **BABA** compliance for **Manufactured Products**. **Documentation must be provided on company letterhead.**

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the manufactured product(s) shipped/provided to the subject project is/are in full compliance with the Build America, Buy America Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA’s State Revolving Fund Programs (if applicable). This/these product(s) meet(s) the 55 percent component cost test, where the cost of components that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components; and final manufacturing occurred in the United States.

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

1. XXXX
2. XXXX
3. XXXX

Final product manufacturing process(es) took place at the following location(s): (City and State)

1. XXXX
2. XXXX
3. XXXX

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative
Printed name of company representative
Professional title of company representative
Email address
Phone number

Compliance Letter



Price Industries Limited
priceindustries.com

638 Raleigh Street, Winnipeg, MB R2K 3Z9 CAN
Phone: (204) 669.4220 | **Fax:** (204) 663.2715

Price Industries Incorporated
priceindustries.com

2975 Shawnee Ridge Court, Suwanee, GA 30024 USA
Phone: (770) 623.8050 | **Fax:** (770) 623.6404

September 25, 2024

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RE: McLean Sheridan Rural Water Treatment Plant

To whom it may concern,

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*Please consider this letter as official communication that the following products are manufactured in the USA and currently comply with the **Build America, Buy America (BABA) Act**, enacted under Division G, Title IX of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58:*

Compliance Letter

- 3
- 520 - Louvered Grille
 - 530 - Louvered Grille
 - RPD - Round Plaque Diffuser

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Casa Grande Arizona

Should you have any questions regarding the above, please reach out to Tradecompliance@priceindustries.com.

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Laurie Montizambert

Laurie Montizambert, CCS
Trade Compliance Manager



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Waivers

General Applicability Waivers

- SRF Design Planning
- De Minimis
- Water Meter
- Small Project
- Minor Components

Product/Project Specific Waivers

- Nonavailability
- Public Interest
- Unreasonable Cost

If multiple federal agencies are funding a project, each agency must obtain their own waivers

SRF Design Planning Waiver

Projects that started design planning prior to May 14, 2022

Design planning:

- Submitted preliminary engineering report, or equivalent
- Issued a Request for Proposal or execution of a contract for design or engineering services
- Execution of an assistance agreement – that includes design
- Documentation of design initiation
- Solicitation of construction contract bids
- Submitted plans and specifications to funding authority
- Public referendum or public meeting held regarding proposed project
- Evidence of new bonds passed, or other new funding secured for project

De Minimis Waiver

Waives BABA requirements for products used in and incorporated into a project that cumulatively comprise no more than five percent of the total project cost.

Total project cost includes all costs associated with the project such as engineering, administration, and land or easement acquisition.

De Minimis Waiver Process

- Provide the SRF project engineer with:
 - Product information including contractor correspondence and/or submittals
 - Justification for use of the waiver
 - Estimated cost of the product
- SRF programs will review and accept the waiver request
- Email the product purchasing invoice to the SRF project engineer

Requirements Differ from Agency to Agency

DoT: total value of non-compliant products is the lesser of \$1 million or 5% of project costs

Commerce: total value of non-compliant products is the lesser of \$1 million or 5% of project costs

USDA: total value of non-compliant products is less than 5% of project costs, each component cannot exceed 1% of project costs

EPA: total value of non-compliant products is less than 5%

Water Meters Waiver

- Issued by both the Bureau of Reclamation and EPA
- Expires December 19, 2027
- From December 20, 2024 to December 19, 2026, all components are waived from BABA requirements
- From December 20, 2026 to December 19, 2027, meter housings must be manufactured domestically

Other General Applicability Waivers

Small Project Waiver

- Applies to projects receiving less than \$250,000 in EPA funds

Minor Components Waiver

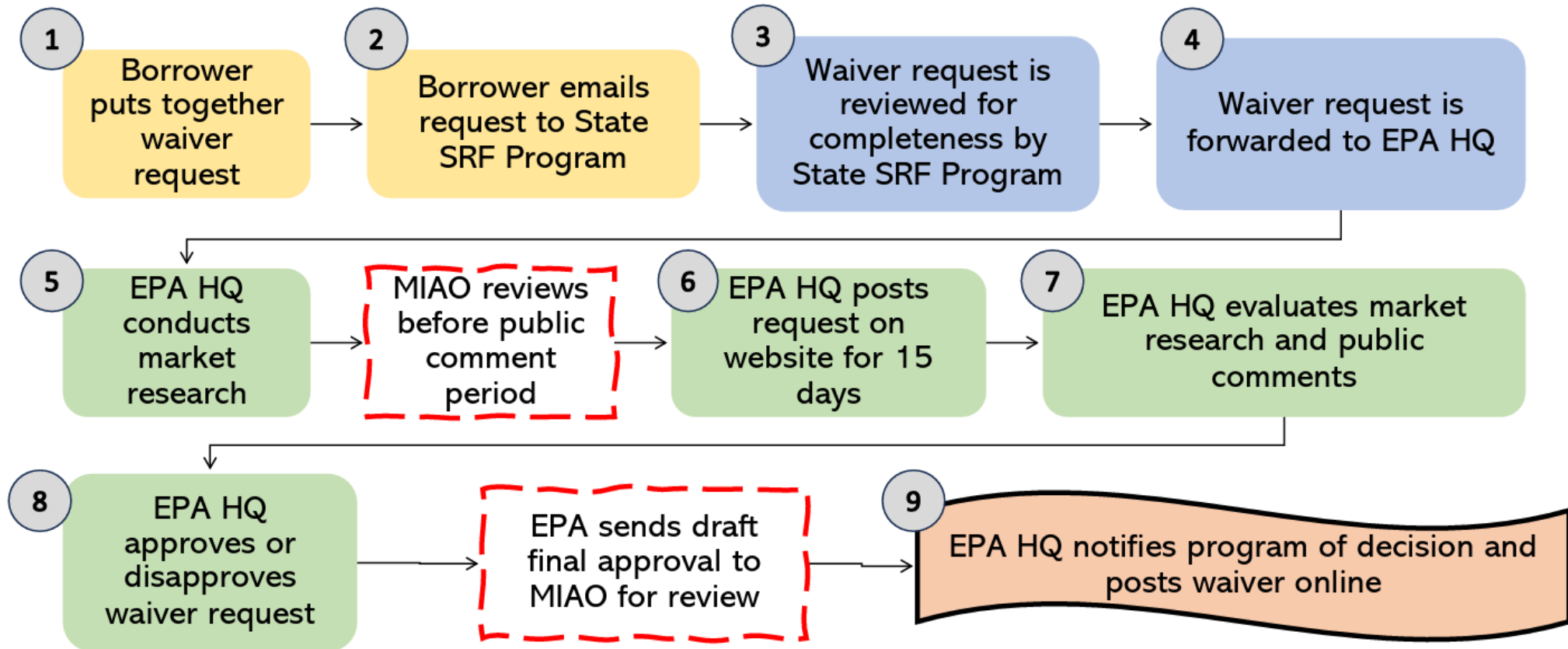
- Applies to iron and steel products
- Allows up to five percent of the total material cost to be nondomestic

Product/Project Specific Waiver Process

- First, make sure no other general applicability waiver applies
- If approved, the waiver will only apply to specific products on a specific project
- Check the EPA BABA website to see if similar waivers exist – may help to build a case, but not guaranteed to be approved for a separate project
- May have an expiration date

Process and Timeline for Waiver Approval

NEW STEPS IN WAIVER PROCESSING THROUGH MADE IN AMERICA OFFICE (MIAO)



No Retroactive Waivers Allowed

“...the waiver cannot apply to **expenditures already incurred** under the Federal award for items subject to a Buy America preference before the effective date of the waiver.”

Questions?



Shannon Fisher, PE

DWSRF Program Manager
North Dakota Department of
Environmental Quality

701-328-5220
smfisher@nd.gov

Bryan Schmitt, PE

DWSRF Engineer
North Dakota Department of
Environmental Quality

701-328-5299
brschmitt@nd.gov