



Clean Water
State Revolving Fund

DOMESTIC PREFERENCE REQUIREMENTS

MANUFACTURERS TRAINING

OCTOBER 2022

AIS AND BABA OVERVIEW

- AIS and BABA will not apply to individual projects at same time

American Iron and Steel (AIS)

- AIS is just for iron and steel products
- AIS – all SRF/WIFIA funded projects
- Has been in place since 2014

Build America Buy America BABA (BABA)

- BABA is for almost every product in a project
- BABA – all federally funded projects
- Began May 14, 2022

AIS BASICS: WHAT IS AIS?

- "American Iron and Steel"(AIS) requires the use of iron and steel products that are produced in the United States for the construction, alteration, maintenance, or repair of a public water system or treatment works
- Applies to projects for *public water systems* (DWSRF), *treatment works* (CWSRF), and all WIFIA projects
- Which products must comply?
 - Must be “primarily” iron or steel
 - Must be a “listed” product
 - Must be permanently incorporated” in the project
- To comply, products must be “produced in the United States”

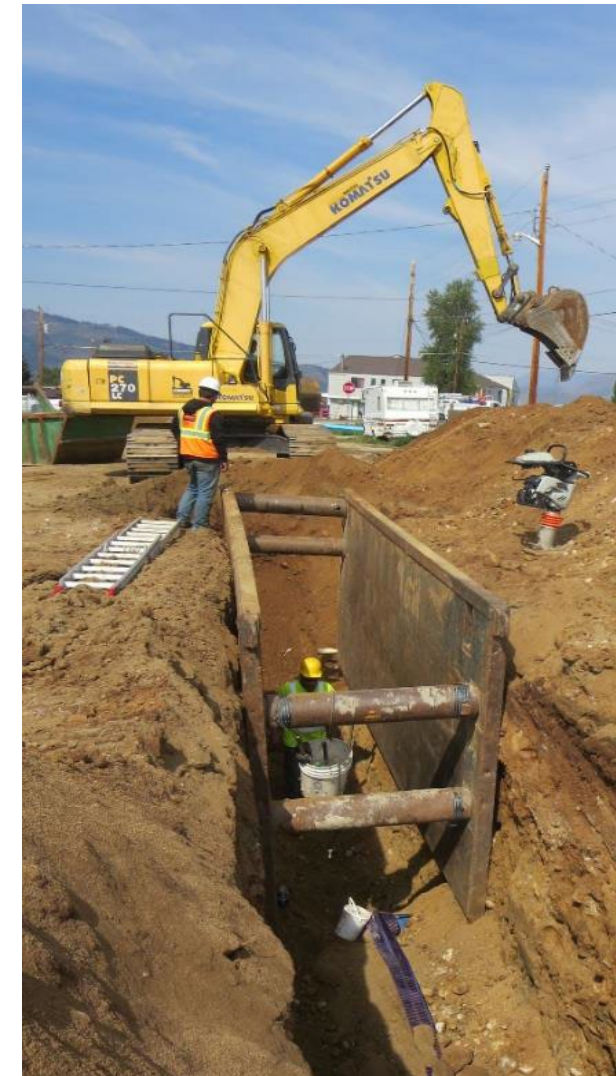


WHAT IS BABA (BUILD AMERICA, BUY AMERICA)?

- Applies to all infrastructure projects under Federal Financial Assistance programs
- All iron, steel, manufactured products, and construction materials must be produced in the United States.
- “Projects” are considered any activity related to the construction, alteration, maintenance, or repair of infrastructure in the U.S.
- “Infrastructure” means anything fixed, permanent, and that serves the public interest.
- Signed November 15, 2021 - Effective date 180 days after: May 14, 2022

BABA COVERED ITEMS

- Iron and steel + manufactured products + construction materials (non-ferrous)
- Items classified into only ONE of the three categories
- Applies to items consumed in, incorporated into or affixed to a project (aka permanently incorporated)
 - Similar to AIS
 - Excluded - Scaffolding, Trench Boxes, temporary framing, anything removed



BABA: IRON AND STEEL

- Same as AIS
- Items that are primarily / predominantly iron or steel, unless another standard applies under law or regulation
- All manufacturing processes, from the initial melting stage through the application of coatings, must occur in the U.S.
 - Coatings change minor difference to AIS



BABA: CONSTRUCTION MATERIALS

- Includes:
 - Non-ferrous metals
 - Plastic and polymer-based products (including PVC, composite building materials, and polymers used in fiber optic cables)
 - Glass (including optic glass)
 - Lumber
 - Drywall
- Excludes:
 - Items made primarily of iron or steel
 - Manufactured products
 - Cement and cementitious materials
 - Aggregates such as stone, sand, or gravel
 - Aggregate binding agents/additives
 - Flora (plantings, landscaping)

BABA: MANUFACTURED PRODUCTS

- Final Manufacturing in the United States
- Cost of components that are mined, produced, or manufactured in the U.S. is greater than 55 percent of the total cost of all components of the manufactured product
 - Likely will not include labor, testing, and other assembly additions to final product
 - Further refinements and/or explanation of test possible from OMB this Fall



BABA: MANUFACTURED PRODUCTS (CONT'D)

- Reminder: Products will fall into only ONE category
 - Will not fall into the Iron/Steel or Construction Materials Categories and the Manufactured Goods category
 - Most products that weren't listed in the AIS requirement
- Examples: (not an exhaustive list)
 - Pumps, membranes, bio-dryers, meters, valves that are NOT primarily iron or steel, so many more items.



BABA: MANUFACTURED PRODUCTS (CONT'D)

- **You asked:** Is OMB considering the concept of **substantial transformation** for manufactured products similar to what was employed during ARRA?
 - No. The manufactured content test in the statute and guidance do not appear to favor substantial transformation. The test, in statute and guidance to date, is a measure of the cost of components of an end product, relative to the total cost of components. However, OMB is considering changes to 2 CRF 200, which may provide an opportunity for public comment relative to the implementation and interpretation of the component cost test.

VALVES AND ACTUATORS

- Valves that fall under Iron/Steel category
 - Primarily or predominantly iron/steel, 50% or greater iron steel, measured by materials cost
 - Must be domestic, beginning with melting
- Valves that will be considered manufactured goods:
 - Not primarily iron and steel (brass, plastic, composite)



VALVES AND ACTUATORS

- Actuators:
 - NOT an AIS or BABA iron/steel product
 - Will fall under manufactured products category for BABA
 - **Even if attached to a valve



VALVES AND ACTUATORS

- **You asked:** Valves are considered iron and steel (AIS and BABA) but once they put an actuator/gear on it (which is manufactured product), does the end product now classify as a manufactured product as many times the actuator will be double the price of the valve?
- A: The iron/steel category in BABA is the same as AIS. If the valve is primarily/predominantly iron steel, then the product must be domestically produced, beginning with melting. Essentially all other valves (those not primarily iron/steel) will be considered manufactured products.
 - If/when a Minor Components waiver is issued, it may apply if criteria are met
 - Barring a national waiver, product and project specific waivers will be given on a case-by-case basis.



BABA WAIVERS

- “Adjustment Period” public interest waiver
 - For SRF: Design Planning Waiver Final, Approved
 - For WIFIA: Design Planning Waiver Final, Approved
 - For Selected OW programs: 6-mo. Waiver Final, Approved (through Mar 1, 2023)
- Allows ***everyone*** (*borrowers, grantees, finance authorities, lenders, manufacturers, suppliers/distributors*) to ramp up operations!

BABA WAIVERS

- *De Minimis* public interest waiver
 - Agency-wide; Final Draft Waiver under OMB Review
 - All projects use a small % (5%?) non-domestic products
- Small Project/Award Threshold – projects under \$250K threshold
 - Agency-wide; Final Draft Waiver very close for Approval

BABA WAIVERS

- *De Minimis* public interest waiver
 - **You asked:** Currently AIS compliance includes a De Minimis waiver for utilities and a Minor Component Waiver for manufacturers. EPA has proposed a revised De Minimis waiver under BABA. If finalized, will this replace the De Minimis waiver under AIS?
 - We don't know yet if the AIS De Minimis waiver will change or not. The BABA De Minimis waiver is still under review. We won't know anything until it's final.

OTHER POTENTIAL BABA WAIVERS

- OMB BABA guidance lists other public interest waivers for consideration:
 - Minor Components Waiver – similar to existing AIS manufacturer waiver, would only be for Iron and Steel
 - Program Priority Waivers – EPA may examine other program-level waivers
- Short-term product-specific waivers
 - For products not currently manufactured in the U.S.
 - Research initiated for variety of complex manufactured products

EPA BABA NEXT STEPS

- Program-specific BABA implementation procedures memo (EPA guidance) – readying Final Draft
 - EPA assessed unanswered questions from MIAO guidance
 - Includes info for OW programs plus SRF-specific questions
 - Will not include details on manufactured prod. and construction materials
 - OMB considering providing clarifying information this Fall
- Assess program needs after Implementation Memo
 - Future BABA Training Needs – National? Program-specific?

WHAT IS YOUR ROLE IN IMPLEMENTING BABA?

- Be informed of the law and implementation procedures
- Understand where your product(s) fit into AIS and BABA
- Communicate with EPA for clarification on the requirement
- Create certification letters for AIS projects and compliance documentation for BABA projects (TBD)
- The necessity to comply will be agreed to by contractors and communicated to manufacturers via and suppliers/distributors.

WHAT IS THE CONTRACTOR/ENGINEER'S ROLE IN IMPLEMENTING BABA?

- You asked: Under AIS, it was common for consulting engineers or contractors to attach these requirements to a project even if the project funding did not require compliance. How will manufacturers know the source of the project funding, whether a specific waiver is applicable (Small project; initiated Engineering design review, etc.)?
 - A: There is sample language for borrowers/recipients in our implementation procedures, and the recipients will then ensure the contractors agree to abide by BABA. EPA and all BABA programs will be making a very big push as the requirements come into effect to ensure that projects know the specific requirements that apply. The BABA requirements apply to any type of federally funded infrastructure, and EPA will be working with programs and states to ensure they do not slip into projects unnecessarily.

RESOURCES

- OMB Guidance:
 - <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>
- EPA Websites:
 - www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement
 - www.epa.gov/cwsrf/build-america-buy-america-baba
- Email Inboxes:
 - [SRF AIS@epa.gov](mailto:SRF_AIS@epa.gov) (underscore!)
 - BABA-OW@epa.gov (hyphen!)
 - Made in America Office: MBX.OMB.MadeInAmerica@omb.eop.gov

QUESTIONS AND DISCUSSION