



Clean Water
State Revolving Fund

BUILD AMERICA, BUY AMERICA ACT AND THE AMERICAN IRON AND STEEL REQUIREMENT

FOR MANUFACTURERS, SUPPLIERS, AND DISTRIBUTORS MARCH 7, 2023



United States
Environmental Protection
Agency

Office of Water

Bipartisan Infrastructure Law (BIL)

- Also known as Infrastructure Investment and Jobs Act (IIJA)
- Signed by President Biden on November 15, 2021.
- Historic investment in key programs and initiatives implemented by the U.S. Environmental Protection Agency to build safer, healthier, cleaner communities.
- Includes \$50 billion to strengthen the nation's drinking water and wastewater systems – the single largest investment in water the federal government has ever made.
- Approximately \$43.4B of this funding through the existing CWSRF and DWSRF programs.



Build America, Buy America (BABA) Act

- New Domestic Preference Law included in BIL
 - Public Law Number 117-58, Title IX, Subtitle A, Part I – Buy America Sourcing Requirements, Sections 70911-70917
 - <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>
- Applies to **all** federal financial assistance programs, not just BIL funding.
- Effective date: May 14, 2022
- “[N]one of the funds made available for a Federal financial assistance program for infrastructure...may be obligated for a project unless all of the **iron, steel, manufactured products, and construction materials** used in the project are produced in the United States.”
- BABA will bolster America’s industrial base, protect national security, and support high-paying jobs.

What about the American Iron and Steel (AIS) Requirements?

- Also a Domestic Preference Law
- A statutory requirement for several water infrastructure programs, including EPA's WIFIA, Clean Water State Revolving Fund, and Drinking Water State Revolving Fund Programs
- As BABA implementation is underway, there will be an intersection of AIS and BABA requirements for projects as new financial assistance awards are issued.

AIS: A *brief* REFRESHER

It's Still Relevant!



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



AIS: What is an Iron/Steel Product?

☒ ^{YES} Is the product “primarily” iron or steel?

☒ ^{YES} Is the product a “listed” product?

☒ ^{YES} Is the product “permanently incorporated” in the project?

If the product meets all the criteria above ☒ ^{YES}, then it is an iron and steel product under the AIS requirement and must be “produced in the United States”.



AIS Basics: Primarily Iron/Steel

- Products greater than 50% iron or steel, measured by material costs only (not labor, overhead, shipping, etc.).
- Who determines if a product is primarily iron and steel?
 - Product manufacturers certify that their product is AIS compliant or does not need to meet AIS requirements.
- How is material cost calculated by the manufacturer?
 - Fire hydrant example:
 - Iron or steel components – bonnet, body and shoe
 - Other material costs – stem, coupling, valve, seals, and other non-iron or steel internal workings
 - Assembly of the internal workings into the hydrant body would not be included in cost calculation





AIS Basics: Covered Products

- Lined or unlined pipes or fittings
- Pipes clamps and restraints
- Manhole Covers
- Valves
- Municipal Castings
- Structural steel
- Hydrants
- Reinforced precast concrete
- Tanks
- Construction materials
- Flanges



AIS Basics: Permanent Products

- Products that are permanently incorporated into the project, including:
 - Spare parts or backup equipment
 - Iron or Steel materials buried or left in place (intentional or not)
 - Examples: sheet piling, bypass valves, drains, etc.
- Temporary, non-permanent item examples:
 - Trench boxes, forms, scaffolding, etc.



AIS Basics: What is “Produced in the US?”

- Manufacturing and processing of iron or steel must occur in the U.S, including:
 - **Melting**
 - Refining
 - Forming
 - Rolling
 - Drawing
 - Finishing
 - Fabricating
 - Assembly
- All processes must take place in the U.S., except:
 - Steel additives refining
 - External coating surface of iron/steel components (rare)

AIS: How Do Projects Comply?

1. Certification Letter

- Letter asserting that all manufacturing processes for the purchased product occurred in the U.S.

2. Waiver

- EPA has authority to waive the AIS requirement and to issue waivers for a project

AIS Basics: Certification Letter = 5 key elements

1. What is the product
 - List product(s) delivered to the project site
2. Where was it made
 - Location(s) of the foundry/mill/factory where the product was manufactured (City and State)
3. To whom was it delivered
 - Name of the project and/or jurisdiction delivered
4. Signature of company representative
 - Certifying official on company letterhead
5. Reference AIS requirements
 - OK if lists more (USDA, DOT, FHA, etc.), but AIS required

AIS: Project/Product Specific Waivers (BABA similar)

- Nonavailability Waiver
 - Most commonly occurring waiver
 - But common in small percentage of all AIS projects ...more expected for BABA
 - Product(s) is not available or will not be available in a reasonable time
- Public Interest Waiver
 - High Bar (Executive Order 14005, Jan 2021)
 - Evaluation can be complicated, longer decision time
- Cost Waiver
 - Increases the total project cost more than 25%
 - To date, only one AIS cost waiver has been approved ...more expected for BABA

AIS: Minor Components Product Waiver

- Waiver intended for Product Manufacturers
- Up to 5% of material costs of an iron and steel product may comprise of miscellaneous minor iron and steel components that are non-domestic
 - Applies only to the ferrous components of an otherwise primarily Iron and Steel product
- Products still considered AIS-compliant

BABA: A Deep Dive into the Requirements



What is BABA?

- “[N]one of the funds made available for a Federal financial assistance program for infrastructure...may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”
- “Project” means: 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.
- Government-wide applicability, across all federal agencies providing federal financial assistance

EPA's Office of Water: Covered Infrastructure Programs

- Alaska Native Villages and Rural Communities Water Grant Program (ANV)
- Clean Water and Drinking Water State Revolving Fund Programs (CW and DWSRF)
- Clean Water and Drinking Water Grants to U.S. Territories and the District of Columbia
- Clean Water Indian and Drinking Water Tribal Infrastructure Grant Set-aside
- Coastal Wetlands Planning, Protection and Restoration Act, (CWPPRA) Programs
- Congressionally Directed Spending/Community Project Funding (also known as Community Grants)
- Geographic Programs (Great Lakes Restoration Initiative, Chesapeake Bay, San Francisco Bay, Puget Sound, Long Island Sound, Gulf of Mexico, South Florida, Lake Champlain, Lake Pontchartrain, Southern New England Estuaries, Columbia River Basin, Pacific Northwest)
- Gulf Hypoxia Program

Covered Infrastructure Programs (cont'd)

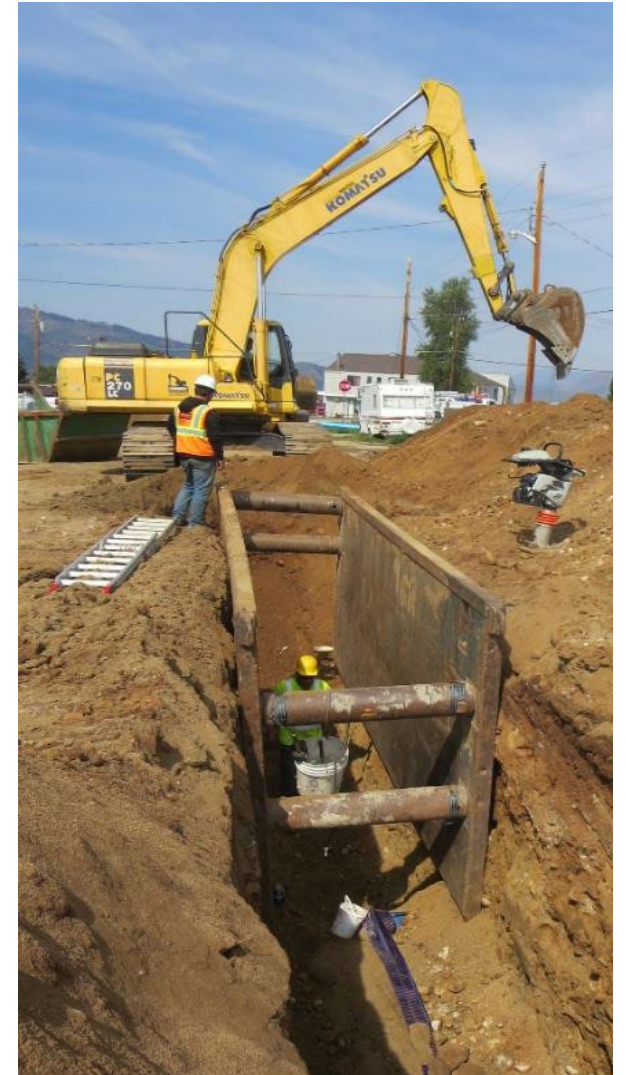
- National Estuaries Program (CWA Section 320)
- 319 Nonpoint Source Management Program Implementation
- Reducing Lead in Drinking Water Grant Program (SDWA §1459B)
- Assistance for Small and Disadvantaged Communities Grants: Small, Underserved, and Disadvantaged Community Grant Program (SUDC), Emerging Contaminants in Small or Disadvantaged Communities (EC-SDC) and Drinking Water Infrastructure Resilience & Sustainability (SDWA §1459A)
- Sewer Overflow and Stormwater Reuse Municipal Grants (OSG)
- USMCA Implementing Legislation (Section 821 and Title IX, USMCA Supplemental Appropriations, 2020)
- U.S.-Mexico Border Water Infrastructure Program
- Voluntary School and Child Care Program Lead Testing and Remediation Grant Program (SDWA 1464(d))
- Water Infrastructure Finance and Innovation Act (WIFIA)

Covered programs that also have AIS requirements

- If BABA requirements are met, AIS requirements will be met
- BABA may not apply to all federally funded projects immediately
- Projects will indicate the applicable requirements (AIS or BABA) for purchase orders
- Newly awarded projects may begin to see BABA requirements as we phase out of this transition period

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)
 - Scaffolding, Trench Boxes, Sheet Piling removed - Excluded



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.
- See Q&As 2.5 and 2.6 of Implementation Procedures (OW BABA) for comprehensive product list



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

Note: OMB proposed regulations have been issued for public comment on the 55% product content determination and will be covered at end of this presentation.



BABA: Construction Materials (Non-Ferrous)

- 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)

Note: OMB proposed regulations have been issued for public comment on the scope of products under construction materials and will be covered at end of this presentation.

BABA: How Do Projects Comply?

1. Certification Letter

- Letter asserting that the purchased product complies with BABA requirements (according to the criteria for compliance for each product category)

2. Waiver

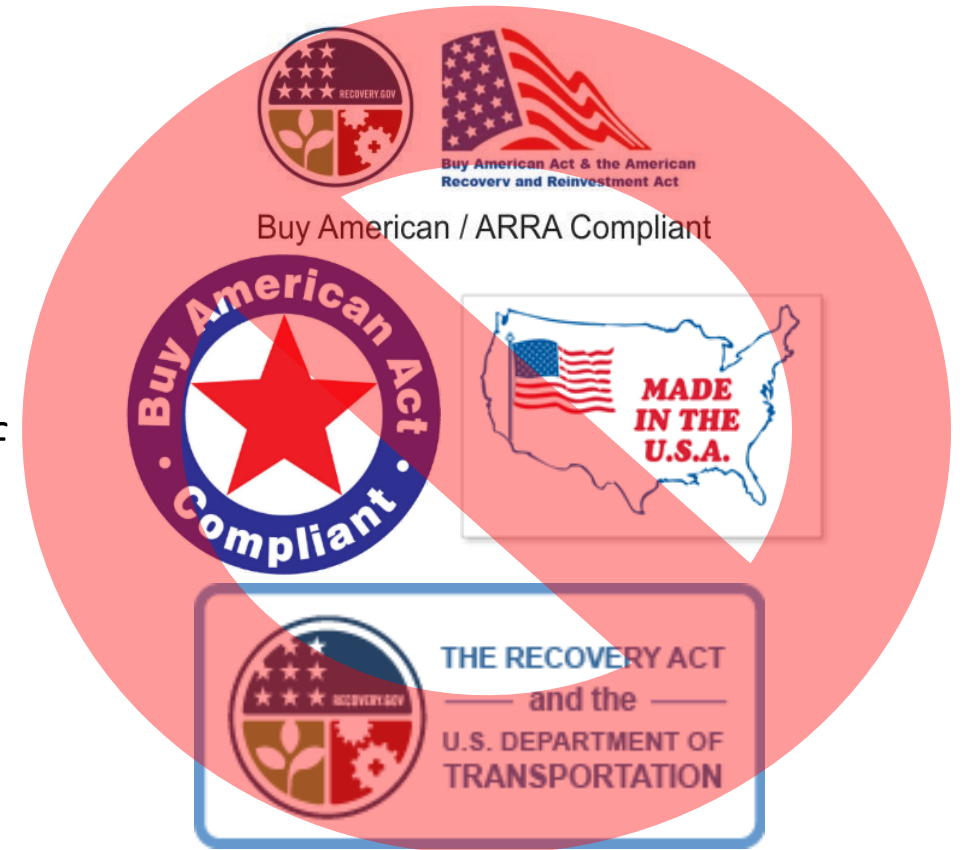
- EPA has authority to waive the BABA requirement and to issue waivers for a project

BABA: Certification Letter

- EPA will implement BABA requirements for Iron and Steel products under BABA in the same way as AIS
- Certification must mention either compliance with AIS, BABA iron and steel, or both. A certification noting BABA compliance can be used as certification for AIS compliance and vice versa for iron and steel products ONLY.
- Certification will be newly implemented for construction materials and manufactured products under BABA, but similar compliance documentation and manufacturer's certification expectations applies.

Stamps, Seals, Stickers on Products indicating 'Buy American'

- NONE are currently being accepted as a replacement for AIS or BABA certification of compliance



BABA: Minor Components Product Waiver

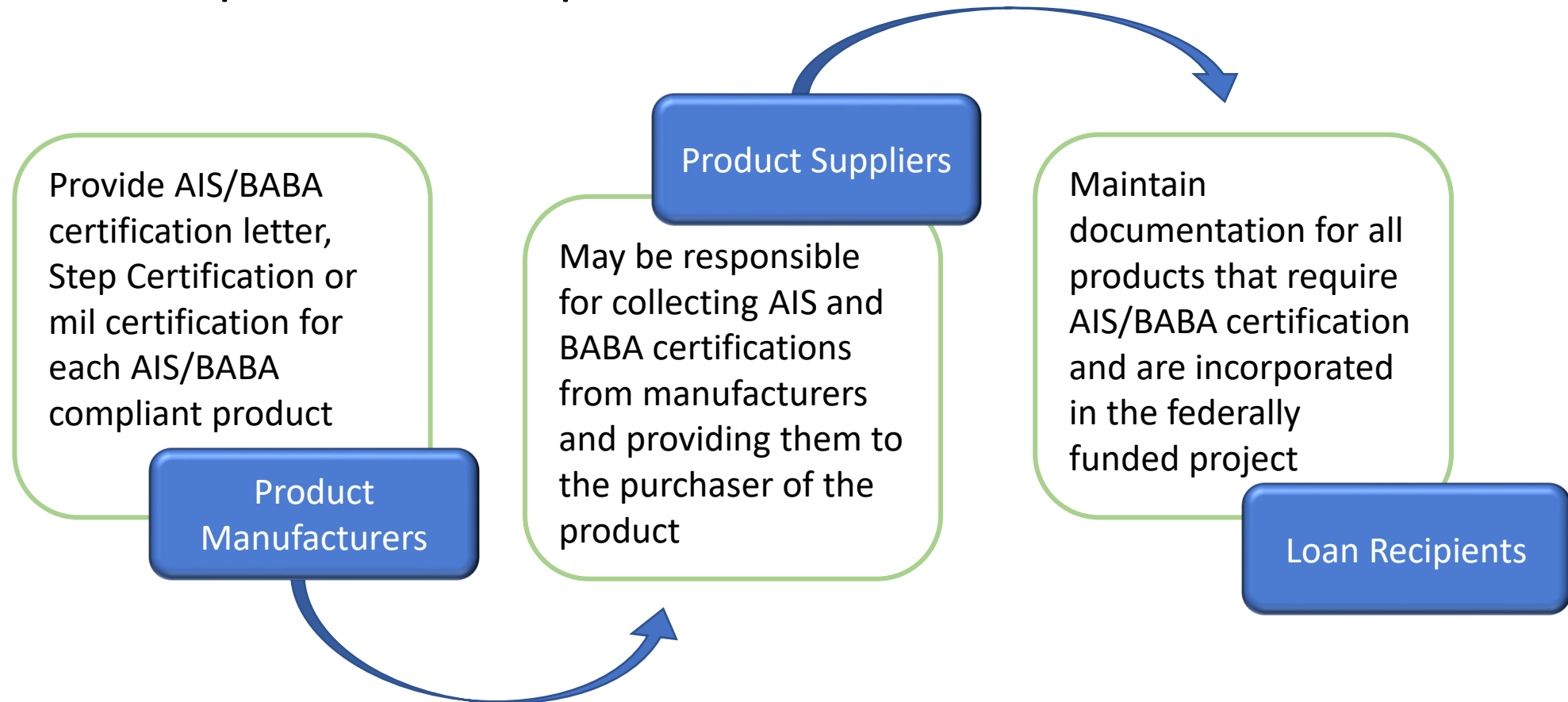
- Similar to the existing AIS Minor Components Product Waiver
- Apply only to the Iron and Steel product category
- Up to 5% of material costs of an iron and steel product may comprise of miscellaneous minor iron and steel components that are non-domestic
- Status: Public comments complete, Agency deliberating

BABA: Broad Product-Specific, Non-Availability Waivers

- For products not currently manufactured in the U.S.
- Research initiated for variety of complex manufactured products
- Short-term, Targeted, and Conditional (M-22-11 guidance)
- Past examples:
 - Small Horsepower Motors – Recovery Act Buy American
 - Stainless Fasteners for Couplings & Restraints - AIS
- Research pending for many complex manufactured products
 - EPA has heard from wide variety of manufacturing interests and representative associations about products of "concern"
 - Waivers (if necessary) will utilize creative solutions coordinated through Made in America Office (across Fed gov)
 - EPA has a successful history of "sunsetting" broad, short-term nonavailability waivers and will apply Stainless Fastener approach

Compliance Roles and Responsibilities

- Manufacturers play a vital role in the compliance of projects for domestic preference requirements.



Manufacturer Certification Letter Example



MINAS MORGUL

Minas Morgul Steel, Inc.
1245 Barad Dur Ave.
Mordor, Middle Earth
+1 555 867 5309

Material Certification

August 29, 2017
Gondor Supply Co.
3477 One Ring Ln.
Fort Tirth, IA 50501

RE: Job Name: Saruman Contracting
Project#: Hobbiton Water Treatment Plant, The Shire, WY
Order Type: Submittal

<u>QUANTITY</u>	<u>DESCRIPTION</u>
30	8550350 66-S VLV BOX 26T 36B 1.5 WTR

Dear Valued Partner:

We hereby certify that the iron used to make the construction castings manufactured by MMS for the above referenced project is in full compliance with ASTM A48, Class 35B and AASHTO M105 for gray iron castings and ASTM A536, Grade 70-50-05 for ductile iron castings. Thank you for specifying and using products manufactured by Minas Morgul Steel, Inc.

The above listed castings are melted and manufactured 100% in the United States of America at our foundries in Moria, OK and Isengard, MI. These castings comply with the applicable provisions of the Code of Federal Regulations 23 CFR 635.410 BUY AMERICA Requirements.

We also certify that the above listed products supplied to the subject project are in full compliance with the American Iron and Steel (AIS) requirement as mandated in EPA's State Revolving Fund Programs.

Meriadoc Brandybuck
Product Quality Manager
Minas Morgul Steel, Inc.

5 Key Elements:

- ☒ Project reference
- ☒ Specific list of products
- ☒ Location of manufacturing (city and state)
- ☒ Signature of representative
- ☒ AIS/BABA reference

BABA: Resources



OMB BABA GUIDANCE

- Released April 18, 2022
- “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure”
- <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>




EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 18, 2022

M-22-11

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young
Director 

SUBJECT: Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52. The Act strengthens Made in America Laws¹ and will bolster America’s industrial base, protect national security, and support high-paying jobs. The Act requires that no later than May 14, 2022—180 days after the enactment of the IIJA—the head of each covered Federal agency² shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”³

The Act affirms, consistent with Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America’s Workers* (“the Executive Order”), this Administration’s priority to “use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States.”⁴

The Act provides statutory authorities for the Made in America Office (“MIAO”) in the Office of Management and Budget (“OMB”) to maximize and enforce compliance with Made in

¹ “Made in America Laws” means all statutes, regulations, rules, and Executive Orders relating to Federal financial assistance awards or Federal procurement, including those that refer to “Buy America” or “Buy American,” that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States. Made in America Laws include laws requiring domestic preference for maritime transport, including the Merchant Marine Act of 1920 (Pub. L. No. 66-261), also known as the Jones Act, Exec. Order No. 14,005, 86 Fed. Reg. 7475, § 2(b) (Jan. 28, 2021), available at <https://www.federalregister.gov/documents/2021/01/28/2021-03038/ensuring-the-future-is-made-in-all-of-america-by-all-of-america-workers>. Made in America Laws also include laws that give preference to Indian-owned and -controlled businesses, such as the Buy Indian Act (25 U.S.C. 47), that produce items in the United States.

² For the purposes of this guidance, the terms “Federal agency” and “agency” mean any authority of the United States that is an “agency” (as defined in section 3502 of title 44, United States Code), other than an independent regulatory agency (as defined in that section). IIJA, § 70912(3).

³ IIJA, § 70914(a).

⁴ Exec. Order No. 14,005 (see footnote 1).

EPA OW IMPLEMENTATION MEMO

- Released November 3, 2022
- “Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs”
- Supplemental to OMB M-22-11 guidance
- <https://www.epa.gov/system/files/documents/2022-11/OW-BABA-Implementation-Procedures-Final-November-2022.pdf>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

November 3, 2022

MEMORANDUM

SUBJECT: Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs

FROM: Radhika Fox
Assistant Administrator

A handwritten signature in black ink, appearing to be "Radhika Fox".

TO: EPA Regional Water Division Directors, Regions I – X
EPA Office of Water Office Directors

OVERVIEW

The Biden-Harris Administration recognized the Nation's critical need for infrastructure investment, championing the Bipartisan Infrastructure Law (BIL), which Congress passed on November 15, 2021 (also known as the Infrastructure Investment and Jobs Act (IIJA)). The BIL will provide an unprecedented level of federal investment in water and wastewater infrastructure in communities across America.

In Title IX of the IIJA, Congress passed the Build America, Buy America (BABA) Act, which establishes strong and permanent domestic sourcing requirements across all Federal financial assistance programs for infrastructure. The U.S. Environmental Protection Agency (EPA) Office of Water is honored to help lead the implementation of these provisions and is proud of its near decade of successful implementation of the American Iron and Steel (AIS) provisions for its flagship water infrastructure programs.

This is a transformational opportunity to build a resilient supply chain and manufacturing base for critical products here in the United States that will spur investment in good-paying American manufacturing jobs and businesses. EPA's efforts to implement BABA will help cultivate the domestic manufacturing base for a wide range of products commonly used across the water sector but not currently made domestically. This will take time, and flexibility will be important to ensure that EPA can leverage critical water investments on time and on budget to protect public health and improve water quality.

EPA OW BABA Implementation Memo

- Section 1: General
- Section 2: Product Coverage
- Section 3: Co-funding
- Section 4: Waivers
- Section 5: Documenting Compliance
- Section 6: Programs with American Iron and Steel Requirements
- Section 7: Program-Specific Issues
- Appendix 1: Example Build America, Buy America (BABA) Act Construction Contract Language
- Appendix 2: Example Build America, Buy America (BABA) Act Assistance Agreement Language

OMB MIAO – Proposed Regulations for BABA Guidance

- Adds new 2 CFR Part 184 that provides guidance on the manufactured products content test and non-ferrous construction materials
- Soliciting public comment on Build America, Buy America Guidance through March 13, 2023
- Invites comment for key questions posed in the preamble

OMB MIAO – 2 CFR Part 184 Highlights

- Manufactured Products
- Proposed: Use the definition of “cost of components” in the Federal Acquisition Regulation (FAR) (48 CFR § 25.003) that is used for Federal procurement
 - Cost of components are determined based on whether they are purchased or manufactured (§ 184.5)
- Proposed: Determination of manufactured product as products not covered by iron and steel or construction materials product categories (§ 184.3)

OMB MIAO – 2 CFR Part 184 Highlights

- Construction Materials
- Proposed: Inclusion of materials under the construction materials product category, such as coatings, brick, engineered wood products (preamble)
- Proposed: Clarification of construction materials, particularly composite building materials, fiber optic cables, optical fibers, and optic glass (preamble)
- Proposed: Construction materials standards for “produced in the U.S.” (§ 184.6)

OMB MIAO – 2 CFR Part 184 Highlights

- Other (Aggregates)
- Proposed: BABA coverage of processed aggregates vs exclusion of raw aggregates (preamble)

OMB MIAO – Public Comment Open

- EPA brings this solicitation of public comment to your attention and notes the opportunity for manufacturing stakeholders to bring issues of concern relevant to their operations and sectors to MIAO's attention.
- MIAO asks that you provide the relevant section number in brackets for your submitted comment, which would look like “[184.5] ... “ for the ‘cost of components’ section, for example.

OMB MIAO – Where to Submit Comments

- https://www.federalregister.gov/documents/2023/02/09/2023-02617/guidance-for-grants-and-agreements?utm_campaign=subscription+mailing+list&utm_source=federalregister.gov&utm_medium=email
- tinyurl.com/NewOMBGuide
- **Comment Period Closes
3/13/23**

The screenshot shows the Federal Register website interface. At the top, there's a navigation bar with links to 'Sections', 'Browse', 'Search', 'Reader Aids', and 'My FR'. Below this is the 'FEDERAL REGISTER' logo and the text 'The Daily Journal of the United States Government'. A blue banner indicates 'Proposed Rule'. The main heading is 'Guidance for Grants and Agreements', with a subheading 'A Proposed Rule by the Management and Budget Office on 02/09/2023'. A message states 'This document has a comment period that ends in 14 days. (03/13/2023)'. A green button labeled 'SUBMIT A FORMAL COMMENT' is circled in red, with a red arrow pointing to it from the right. Below the button is a link 'Read the 9 public comments'. The bottom section is titled 'PUBLISHED DOCUMENT' and contains details about the document, including the agency (Office of Federal Financial Management, Office of Management and Budget), the action (Proposed rule; notification of proposed guidance), and the summary (The Office of Management and Budget (OMB) is proposing to revise OMB). A 'DOCUMENT DETAILS' sidebar on the right shows the printed version as a PDF, the publication date as 02/09/2023, the agency as Office of Management and Budget, and the dates as March 13, 2023, with a note that all public comments received are subject to the Freedom of Information Act.

RESOURCES

- 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 (underscore!)
 - BABA-OW@epa.gov (hyphen!)

QUESTIONS AND DISCUSSION