

**PRE-PUBLICATION NOTICE.** The EPA Assistant Administrator for Water, Radhika Fox, signed the following document on November 14, 2023, and the EPA is submitting it for publication in the Federal Register (FR). This document is not disseminated for purposes of EPA’s Information Quality Guidelines and does not represent an agency determination or policy. We have taken steps to ensure the accuracy of this Internet version of the document, it is not the official version. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office’s govinfo website (<https://www.govinfo.gov/app/collection/fr>). It will also appear on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OW-2023-0396. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OW-2023-0396; FRL 11285-01-OW]**

### **Request for Information Regarding Products and Categories of Products Used in Water Infrastructure Programs**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for information (RFI).

**SUMMARY:** To support further development of multiple funding programs for water infrastructure subject to the requirements of the Build America, Buy America Act, the Environmental Protection Agency (EPA) invites public comment to inform the domestic availability of multiple products used in the construction, alteration, and/or maintenance of water infrastructure. The EPA is inviting comments to enable the agency to have the most comprehensive and current information available on the domestic market for BABA-covered products for its programs and the water infrastructure programs of other agencies. The EPA, along with the U.S. Department of Agriculture, the U.S. Army Corps of Engineers, the U.S. Department of Housing and Urban Development, the Federal Emergency Management Agency, the Department of Transportation, and the U.S. Department of the Interior, are especially

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interested in comments detailing domestic materials sourcing, market readiness, other product supply considerations, and whether specific water infrastructure products or their components are manufactured in the United States.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, to allow for their consideration during development of these funding programs. The EPA may consider comments received after the due date to the extent practicable.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2023-0396, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method).  
Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov).
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this notice.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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**FOR FURTHER INFORMATION CONTACT:**

Timothy Connor, Chemical Engineer, Office of Wastewater Management at (202) 566-1059, or via email at *connor.timothy@epa.gov*; or Leslie Corcelli, Physical Scientist, Office of Ground Water and Drinking Water at (202) 564-3825, or *corcelli.leslie@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2023-0396, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information, Proprietary Business Information, or other information where disclosure is restricted by statute. If you wish to submit information containing CBI, contact Timothy Connor (*connor.timothy@epa.gov*) with any questions on the EPA's secure CBI protocol or to initiate Agency procedures for submitting confidential information. After contacting the EPA regarding your intent to submit CBI, a secure data exchange will be initiated and detailed instructions will be provided. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for

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additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

## **II. General Information**

The Infrastructure Investments and Jobs Act (P.L. 117-58, Nov. 15, 2021) provides \$50 billion of new funding for water infrastructure, funding that includes domestic content requirements (see details below). These developments provide an opportunity for significant expansion of domestic capacity. Additionally, the IIJA and the Inflation Reduction Act (P.L. 117-69, Aug. 16, 2022) collectively provide more than \$10 billion of additional funding to the Department of Interior, Bureau of Reclamation for aging infrastructure, water delivery systems for rural communities, and to increase water supply. The EPA wishes to work in coordination with other agencies and with private industry to provide clear and consistent demand signals for products used in water infrastructure projects.

The purpose of this Request for Information (RFI) is to improve federal agencies' understanding of the current state of the domestic market for products required to service drinking, agricultural, wastewater treatment and delivery systems.

The Build America, Buy America Act requires iron, steel, manufactured products, and construction materials used in infrastructure projects funded by federal financial assistance to be produced in the United States. While BABA provides the opportunity for the EPA and other agencies to issue certain waivers to these requirements, approval depends on many factors, including availability of domestically sourced materials and products. Responses to this RFI will improve the agencies' understanding of the current domestic market for these products to

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effectively implement BABA for projects funded by its water infrastructure programs and to evaluate the potential need for short-term product waivers from BABA requirements if products are unavailable.

In this RFI, the agency provides a brief background of water infrastructure programs in the EPA's Office of Water, includes background information on BABA provisions, and requests comments and responses regarding products or categories of products for specific areas of interest. This RFI also includes guidance on submitting comments, procedures for submitting CBI, and where to find additional information.

### **Responding to this RFI**

Please indicate in your written comments the area of interest (product or category of product) and the topic number(s) below you are commenting on and provide specific examples or information to illustrate your comments where possible. You do not need to address every topic and should focus on those where you have relevant expertise or experience. In all cases, to the extent possible, please cite any public data related to or that support your responses. If data are available, but non-public, describe such data to the extent permissible. Responses with specific data are especially useful. As discussed in Section I, CBI is protected from public disclosure when properly submitted.

### **Background**

In this section, the agency provides background information on the Office of Water infrastructure programs subject to the BABA requirements. The IIJA, also known as the Bipartisan Infrastructure Law, appropriated \$50 billion to the EPA to strengthen the nation's drinking water and wastewater infrastructure. The IIJA includes BABA, establishing new and expanded

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domestic preference requirements for infrastructure projects that receive federal financial assistance. (P.L. 117-58, Nov. 15, 2021, §§ 70901-52). Importantly, BABA requirements apply to all federal financial assistance programs that include infrastructure projects. Currently, the EPA's Office of Water administers at least seventeen programs that provide federal financial assistance for water infrastructure, including the Drinking Water State Revolving Fund (DWSRF) program, the Clean Water State Revolving Fund (CWSRF) program, and the Water Infrastructure Finance and Innovation Act (WIFIA) program. These programs address critical water infrastructure needs through construction, alteration, or repair of water, wastewater, and stormwater infrastructure, including, but not limited to, lead service line replacement, water quality improvements, source water protection, treatment of emerging contaminants, and climate resilience.

Through this RFI, the EPA seeks information regarding the domestic availability of specific water infrastructure products identified in this notice. The agency is interested in promptly obtaining more information on this and other issues discussed in this notice to assess if enough products/systems are currently available to comply with BABA requirements or whether sufficient products would be available in the future, and if so, when. This information will also be supplied to USDA, USACE, FEMA, HUD, DOT, and Interior which also manage water infrastructure programs.

### **Build America, Buy America Act**

BABA requires each covered federal agency to ensure that “none of the funds made available for a Federal financial assistance program for infrastructure. . . [are] obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are

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produced in the United States” except if a waiver is granted. (P.L. 117-58, § 70914.) These requirements apply to an entire infrastructure project funded by federal financial assistance, including those funded by the EPA water infrastructure programs, even if it is also funded by non-federal funds. The EPA is committed to ensuring strong and effective BABA implementation and compliance.

For all predominantly iron or steel products used in infrastructure projects that involve the obligation of federal financial assistance, all manufacturing processes of the iron and/or steel components, beginning with initial melting and including application of a coating, must occur in the United States (matching the American Iron and Steel statutory requirements). (P.L. 117-58, § 70912(6)(A).) Per the “Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs” dated November 3, 2022, the EPA interprets a predominantly iron and steel product as “... made primarily (more than 50 percent) of iron and/or steel by materials cost ....” This is consistent with the American Iron and Steel statutory requirements.

Manufactured products must be produced in the United States, meaning the final point of manufacturing must occur in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product. (P.L. 117-58, § 70912(6)(B).)

For construction materials, all manufacturing processes must occur in the United States. (P.L. 117-58, § 70912(6)(c).) Construction materials include incorporated products primarily made of

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non-ferrous metals, plastic and polymer-based products (including polyvinylchloride), fiber optic cable (including drop cable), optical fiber, glass, lumber, engineered wood, and drywall. (P.L. 117-58, § 70911(5) and 2 CFR 184.6.)

### **Request for Comments and Information**

In this section, the agency describes four general topics that it anticipates will be addressed for the products or categories of products listed below. To inform BABA implementation for the EPA's Office of Water and the additional federal water infrastructure programs, including those administered by USDA, USACE, FEMA, HUD, DOT, and Interior, the EPA requests comments and information from the public on the following products or categories of products:

- lead service line replacement components (including but not limited to, service line, service saddle, corporation stop, curb stops, curb stop boxes and lids, service line fittings, water meters, meter setters, meter boxes, check valves and shut-off/isolation valves);
- valve actuators (electric/pneumatic/manual);
- pumps and pump motors;
- stainless steel products and domestic mills, especially small diameter pipe and fittings;
- PFAS treatment systems and media, especially granular activated carbon (GAC);
- controls and switches;
- analytical instrumentation;
- supervisory control and data acquisition (SCADA) systems;
- backup power products and systems;
- blowers and aeration equipment;
- gear reducers;
- drives (including variable frequency drives (VFDs));
- ultraviolet (UV) water treatment systems;



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- membrane and other filtration systems (e.g., ion exchange, membrane, and reverse osmosis);
- clarifier mechanisms;
- disinfection systems;
- conveyors;
- dewatering equipment (such as compressors and presses, including belt presses);
- floating surface aerators;
- ozone generators;
- measurement sensors;
- water meters and associated communications devices;
- automated level control gates; and
- other critical water infrastructure products, including whether they comply with applicable BABA requirements.

For each of these products or categories of products and based on your current understanding of BABA requirements, the EPA is requesting the following information about the following four general topics: domestic materials sourcing and manufacturing, market readiness, delivery lead times and other. At the beginning of your response, please specify the products for which you are providing an answer:

Products: Please clearly identify the products or categories of products for which you are providing a response. If you are referring to “other critical water infrastructure products and systems,” please provide a detailed description of the product or system.

1. Domestic Materials Sourcing and Manufacturing

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- a. For each of the products or categories of products you identified, please specify whether the product meets BABA requirements (described above) or is currently manufactured in the United States to meet a domestic final assembly condition. (Yes or no).
- b. Please identify whether the products in your response fall within the iron and steel, manufactured products, or construction materials categories of BABA.
- c. If you answered “Yes” to Topic 1(a), to the best of your knowledge.
  - i. Please identify all manufacturers that can either meet BABA requirements or can currently manufacture products or categories of products you specified in the United States. For products that meet the condition of manufactured in the United States, please identify the manufacturing location and percentage of components manufactured in the United States as calculated by cost of components (if known).
  - ii. What is the current production capacity of the products that can meet BABA requirements?
  - iii. What is the anticipated growth in BABA-compliant capacity over the next five years? Does this anticipated growth consider the more than \$50 billion in increased funding described above? Please explain.
  - iv. For products able to meet BABA requirements, what is the estimated lead time from purchase order to delivery to the project site? Has this lead time increased or decreased in recent years?

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d. If you answered “No” to Topic 1a:

- i. What actions are manufacturers taking/could take to increase the manufacturing of products that will meet BABA requirements?
- ii. What additional support or incentives (e.g., financial, rulemaking certainty, etc.) are needed to ensure a sufficient supply of products that meet BABA requirements?
- iii. How long might it take to implement the steps needed to increase or begin production of BABA compliant products?
- iv. If a plan is in place to manufacture BABA compliant products, what is the volume of specific products that will follow BABA requirements and in what time frame?
- v. Will the volume of BABA compliant products be ramped up over time, and, if so, at what annual growth rate?
- vi. What are the limiting factors for the product’s ability to meet criteria for BABA compliance? For example, are there components of these products for which it is hard to meet BABA requirements? Please describe each component separately and indicate approximately what percent of component value it represents.

## 2. Market Readiness

- a. For all products specified in Topic 1(a), provide your observations on the current and near-term demand expected for these products or categories of products. Does

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this estimate of future demand consider the more than \$50 billion in increased funding described above? Please explain.

b. Provide information regarding whether the current and/or near-term manufacturing capacity would be adequate to meet the expected market demand.

Please specify any factors helping or preventing the industry from meeting the expected demand today and in the near-term and provide information on the current and expected availability or unavailability of key components or sub-components of the product or category of products you specified.

c. Are there supply chain issues that make it difficult to credibly communicate the existence of increased demand, or to credibly commit that such demand will be forthcoming? If so, please describe as specifically as possible.

### 3. Timing

a. Where known, for each product/category of products specified in Topic 1, specify the current range of expected product delivery timeframes. Are any existing supply chain delays applicable or anticipated for the product(s) or critical components of the product(s)?

b. Provide information, if available, on expected delivery timeframe outlooks through the near-term future. Provide information, if known, on whether current timing delivery concerns are related to a temporary disruption.

c. Provide information on the current and expected near-term average customer delivery time.

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- d. Provide information regarding global supply chain constraints, local permitting, safety requirements and needs that may affect delivery timeframes or extend installation time.
4. Other Practical Considerations: Please specify any other considerations for the EPA regarding production, products, systems, equipment, or components of products used in water infrastructure.

Radhika Fox,  
*Assistant Administrator.*