



## Update on Buy America Requirements for the Water Sector

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Since 2014, manufacturers in the municipal water space have had to comply with American Iron and Steel (AIS) requirements as originally passed by Congress in the *Consolidated Appropriations Act of 2014*. Municipalities that want to use drinking water and clean water state revolving loan funds (SRF), WIFIA funding, or funding from the USDA Rural Utility Service must certify that specific products made of iron and steel and listed by Congress are manufactured in the U.S. (<https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>). A comprehensive waiver process was established for those listed products that are not made in the U.S. although it is a multi-step, time-consuming process and at times, previous Administrations have curtailed or prevented the use of waivers.

On November 15, 2021, President Biden signed the *Bipartisan Infrastructure Bill (H.R. 3684)* titled *Infrastructure Investment and Jobs Act* into law. Now referred to as the *Bipartisan Infrastructure Law (BIL)*, it provides \$1.2T for infrastructure funding including \$55B for drinking water and wastewater improvements through new funding for the SRFs and WIFIA, lead service line replacement, and addressing emerging contaminants such as PFAS. Targeted to small and disadvantaged communities, 49 percent of the funding is expected to go out as grants and principal loan forgiveness.

The law also applies new domestic content requirements to not only the current funding mechanisms listed above but also for every other loan and grant program administered by EPA, USDA, the Bureau of Reclamation, U.S. Army Corps of Engineers, and across the entire Federal Government. Referred to as Build America, Buy America (BABA), instead of applying to a specific list of iron and steel products, the law states that the term “domestic content procurement preference” means that no amount of funding made available through a program for Federal financial assistance may be obligated for a project unless—(A) all iron and steel used in the project are produced in the United States; (B) the manufactured products used in the project are produced in the United States; or (C) the construction materials used in the project are produced in the United States. Construction Materials means common construction materials for public works infrastructure projects including 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, and drywall.

The term “produced in the United States” means — (A) in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (B) in the case of manufactured products, that—(i) the manufactured product was manufactured in the United States; and (ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (C) in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States. The implementation date to meet these new requirements was May 14, 2022.

The law also codified the creation of the Made in America Office (MIAO) in the Office of Management and Budget with the responsibility of developing whole-of-Government guidance on implementing these new requirements as well as reviewing all waiver requests and developing of list of products not currently produced in the U.S. The MIAO released its *Guidance* on April 18, 2022. The *Guidance* primarily restates the law but adds additional language around the use of waivers (<https://wwema.org/wp-content/uploads/2022/05/OMBBuyAmericaGuidance041822.pdf>). The Biden Administration has also made it clear that waivers will be the exception NOT the rule.

It is now the responsibility of each Federal Agency to develop their own implementation procedures and guidance. EPA is currently developing implementation procedures and Q&As to address a number of outstanding issues. EPA has also issued several final waivers including:

- 1) *De Minimis* General Applicability Waiver for EPA Financial Assistance Awards and Procurements (Published October 21, 2022; waives compliance for up to 5% of the project cost for miscellaneous, low-cost products essential to construction; will review by October 20, 2027).
- 2) Small Project General Applicability Waivers for Projects with Federal Funding Less Than \$250,000 (Published September 26, 2022; waives BABA requirements; will review by September 26, 2027)
- 3) Temporary Public Interest Waiver for Selected EPA Funding Programs — includes Congressional earmarks taken off the top of the SRFs (Published September 2, 2022; waives BABA requirements; expires March 1, 2023)
- 4) Adjustment Period Waiver for SRF Projects that Initiated Design Planning Prior to May 14, 2022 (Published September 2, 2022; waives BABA requirements — AIS requirements still apply; no expiration date)
- 5) WIFIA Program Waiver for Projects in Design Planning Prior to May 14, 2022 (Published June 22, 2022; waives BABA requirements — AIS requirements still apply; no expiration date)

Information about EPA's proposed and finalized waivers can be found at <https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers>. In addition, EPA is interested in hearing from manufacturers and others in the water sector about potential compliance issues. Comments and questions can be submitted to EPA at [BABA-OW@epa.gov](mailto:BABA-OW@epa.gov). More information about EPA BABA activities can be found at <https://www.epa.gov/cwsrf/build-america-buy-america-baba>. EPA presentations and other resources can be found at <https://www.epa.gov/cwsrf/build-america-buy-america-baba-resources>.

Of particular importance to water sector manufacturers is that the MIAO will be developing the guidance on calculating compliance with the 55% domestic content requirements and the certification process. This guidance is not expected until the Fall of 2022 which presents a challenge for manufacturers currently working through bid processes. The MIAO may also decide to use a regulatory approach instead of issuing guidance on this topic.

While other sectors have operated under similar requirements for a number of years, this is new to the water sector. WWEMA surveyed our members to gather information about the impacts these requirements may have on products manufactured or used in the water sector and shared that information with EPA and the MIAO along with recommendations on short-term actions that can be taken to mitigate the impacts of these new requirements. The document can be found at <https://wwema.org/wp-content/uploads/2022/05/BABALettertoOMBandEPA051622.pdf>.

WWEMA has also created a *Buy America Resources* webpage for WWEMA members where all information about Federal guidance, waivers, and water sector actions can be found. This includes waiver responses, presentations, WWEMA and joint water sector letters, and identification of projects for BIL funding that can be used for evaluating business opportunities. WWEMA is an industry leader in educational outreach on BABA requirements and in advocacy efforts with EPA, MIAO, and the Biden Administration. Join WWEMA today to help “raise our voice” for the collective water community. For more information contact WWEMA Executive Director, Vanessa Leiby, at [vanessa@wwema.org](mailto:vanessa@wwema.org).