



Build America, Buy America Act – SRF Implementation

March 2023

Background:

Build America, Buy America (BABA) Act expands upon existing American Iron and Steel (AIS) requirements of State Revolving Loan (SRF) funded projects and requires that, in addition to iron and steel, all manufactured products, and construction materials for the project be produced in United States. BABA requirements apply to the following SRF projects:

- Projects with SRF agreements executed on or after May 14, 2022.
- Projects using in part or whole, direct pass-through funding from Environmental Protection Agency (EPA) capitalization grants (equivalency projects). Equivalency projects are identified annually in the Intended Use Plan. Projects using only recycled state funds are not required to comply with BABA.
- Projects not covered under a waiver (described below).

This document is intended to outline how Idaho Department of Environmental Quality (DEQ) will satisfy BABA requirements through the SRF program. Additional BABA guidance and forthcoming resources can be found at EPA's website at <https://www.epa.gov/cwsrf/build-america-buy-america-baba>

BABA Implementation:

Implementation of BABA requirements will be accomplished on SRF projects as follows:

- **Funding Agreements:** Funding agreements will identify projects either BABA or AIS requirements based on the funding source. BABA projects reciprocally satisfy AIS requirements. Thus, both BABA and AIS will not be required on the same project. AIS will remain in effect for all SRF projects, even those obtaining coverage under a general applicability waiver (described below).
- **Specification Insert:** BABA requirements will be included in "Idaho State Revolving Fund Supplemental Specifications Insert with BABA". This specification insert must be included in bid documents and construction contract documents. In general, the contractor is required to:
 - Submit an executed Bidder's Certification of Compliance, as part of the sealed bid; this Certification is required to constitute a valid bid.
 - Throughout the duration of construction, secure "statements of compliance" from the manufacture for all BABA products.
 - Throughout the duration of construction, maintain an on-site compliance log of all products delivered to the site and corresponding statements of compliance for each product.
- **Inspection:** The recipient and their engineer should periodically conduct on-site inspections to review the materials compliance logs being maintained by the contractor to ascertain the completeness of information being recorded. DEQ will review this information during interim and final SRF construction inspections.
- **Certification:** The recipient and their engineer will be required to certify that the project is in compliance with BABA with each reimbursement request submittal to DEQ. Copies of manufacture's statement of compliance will not be required with reimbursement requests.

General Applicability Waivers:

To date, several general applicability waivers have been issued by EPA. SRF recipients may be eligible for coverage under a general applicability waiver if they meet the criteria described below:

- **Design Intent Waiver:** When it can be demonstrated to DEQ that design planning was initiated prior to May 14, 2022 which may include one of the following: 1) Facility plan, preliminary engineering report, or equivalent engineering report submitted to DEQ for approval that evaluates and identifies both technologically and financially viable project alternatives, 2) Public referendum or public meeting held regarding the proposed project alternatives, 3) Evidence of new bonds passed or other new funding backing secured for the project, 4) Issued request for proposal or execution of professional services contract for design of engineering services, 5) Construction plans and specs submitted to DEQ for approval, 6) Solicitation of construction contract bids, or 7) Case-by-case not listed above and approved by EPA and DEQ in writing. Typically, DEQ will screen applicants during the SRF application phase to ascertain if this waiver is applicable.
- **De Minimis Waiver:** Products (not project wide) eligible for a de minimis waiver must be considered incidental to the project and the sum of the total of the combined products does not exceed 5% of the total cost of the project. A detailed log of de minimis material shall be kept by the Contractor on site.
- **Small Projects Waiver:** Recipients who's total SRF agreement is less than \$250,000 are not required to comply with BABA.
- **Minor (Ferrous) Components of Iron and Steel Products:** Currently under development by EPA. If approved, the waiver would allow up to five percent of the total material cost to include non-domestically produced miscellaneous minor iron or steel components without further need for a product-specific waiver.

Note: AIS de minimis waiver considers the total material cost while BABA considers the total project cost

Project Specific Waivers:

Project specific waivers may be issued on a case-by case basis by EPA in coordination with Office of Management and Budget (OMB) for the following categories: 1) applying BABA requirements would be inconsistent with the public interest; 2) iron and steel, manufactured products, and construction materials are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or 3) inclusion of iron and steel, manufactured products, and construction materials produced in the US will increase the cost of the overall project by more than 25%.

- **Project Specific Waiver Application:** The recipient, in coordination with the contractor, may apply for BABA waiver by submitting a complete waiver application to DEQ. Once the DEQ determines the application is complete, a copy will be submitted by DEQ to OMB and EPA on behalf of the recipient.
- **Waiver Application Contents:** The recipient and contractor should include the following items within the waiver application 1) a brief summary of the project, 2) a description and explanation of the need for the waiver for the product(s) in question, 3) a brief summary of the due diligence conducted in search of domestic alternatives (which could include correspondence between assistance recipient and supplier/distributors), 4) the quantity and materials of the product(s) in question, 5) all engineering specifications and project design considerations relevant to the product(s) in question, 6) the approximate unit cost of items (both foreign and domestic) in addition to an estimated cost of the materials and overall project, 7) the date any products will be needed on site in order to avoid significant project schedule disruptions, and 8) any other pertinent information relevant to OMB and EPA's consideration of the waiver.

Recipients and engineers should be aware of potential schedule impacts when applying for a project specific waiver and coordinate with DEQ as soon as possible if considering a project specific waiver.