



## **Build America, Buy America Act for Projects Funded by the Clean Water and Drinking Water State Revolving Funds**

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

The Build America, Buy America Act (BABAA) requires that infrastructure projects that receive federal funding be built with iron, steel, construction materials and manufactured products that are produced in America, which is defined as:

- Iron and Steel: all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- Construction Materials: all manufacturing processes for the construction material occurred in the United States.
- Manufactured Products: the manufactured product is manufactured 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.

BABAA was enacted as part of the [Infrastructure Investment and Jobs Act \(H.R. 3684\)](#), which became law on November 15, 2021. BABAA domestic preference procurement requirements became effective on May 14, 2022.

### **Guidance on Implementation and Compliance**

Because BABAA applies to infrastructure funding programs across the federal government, The White House Office of Management and Budget's Made in America Office (OMB) is responsible for issuing guidance for implementation and compliance. On April 18, 2022, OMB issued Initial [Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#).

OMB is expected to issue guidance on the content test for construction materials and manufactured products, as well as compliance procedures, in the fall of 2022.

### **BABAA for SRF Projects**

BABAA requirements apply to SRFs projects that receive federal funding or equivalency projects, which are projects in an amount equal to the federal capitalization grant. BABAA requirements do not apply to projects funded with state funding, including state match and loan repayments.

### **BABAA Waiver for Some SRF Projects**

On Friday, September 2, 2022, the U.S. Environmental Protection Agency (EPA) issued a national public interest, adjustment period waiver of BABAA procurement requirements for construction materials and manufactured products for projects that initiated design planning before the effective date of the law, May 14, 2022.

The waiver doesn't apply to BABAA requirements for iron and steel. The waiver doesn't include an expiration date.

### **BABAA Requirements for Iron and Steel**

While not explicitly stated, it is believed that compliance with requirements for American Iron and Steel (AIS) will satisfy compliance BABAA requirements for iron and steel.

BABAA allows for existing statutory requirements that meet or exceed the BABAA requirements to be accepted as compliance, often referred to as the "savings provision." AIS requirements are believed to meet or exceed the BABAA requirements, so compliance with AIS equals compliance with BABAA.

### **Eight Qualifying Actions to Demonstrate "Initiated Design Planning"**

The waiver provides eight actions taken by a borrower that demonstrate design planning was initiated prior to the effective date of the law, May 14, 2022.

- i. Submitted preliminary engineering report, or equivalent (to the state or to the assistance recipient)
- ii. Issued a Request for Proposal or execution of a contract for design or engineering services (regardless of funding source)
- iii. Execution of an SRF assistance agreement – that includes design
- iv. For project designed by assistance recipient, documentation of design initiation (such as completed preliminary engineering report)
- v. Solicitation of construction contract bids
- vi. Submitted plans and specifications (do not need to be complete) to state authority
- vii. Public referendum or public meeting held regarding proposed project
- viii. Evidence of new bonds passed or other new funding backing secured for project

Projects that can't document one of these actions can apply to EPA for a project waiver on a case-by-case basis.