

Build America, Buy America Frequently Asked Questions

The following FAQs were compiled from a number of resources made available by the EPA. The EPA's BABA website contains further information, including the statutes and point of contacts for BABA implementation. <https://www.epa.gov/cwsrf/build-america-buy-america-baba>

What is Build America, Buy America Act (BABA)?

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 (BABA). Pub. L. No. 117-58, §§ 70901-52. BABA strengthens Made in America Laws and will bolster America's industrial base, protect national security, and support high-paying jobs.

BABA requires that on or after May 14, 2022, the head of each covered Federal agency shall ensure that **“none 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.”** (Build America, Buy America (BABA) Act, P.L. 117-58, Secs 70911 - 70917). EPA is a covered agency.

BABA applies to all federal financial assistance as defined in section 200.1 of title 2, Code of Federal Regulations—*whether or not funded through IIJA*—where funds are appropriated or otherwise made available and used for a project for infrastructure.

How long does something need to be installed at a site to be considered permanently affixed?

Generally, in the context of real property, the term “affix” means to attach something to real estate in a permanent way. For example, constructing a building. Affixed items are permanent and cannot be picked up and moved away. There is no set duration of time that constitutes “permanence.”

Recipients are encouraged to check with their project officer to determine whether projects may use items considered to be “permanently affixed.” Some examples of remediation materials that *may* be considered permanently affixed may include monitoring wells, vapor intrusion mitigation systems embedded in the structure and solidification materials.

Does BABA supersede the American Iron and Steel (AIS) Requirements?

The BABA requirements for items considered “iron and steel” are equivalent to those for covered iron and steel products under the AIS requirements in the SWIFR program. BABA includes a “Savings Provision” (Section 70917(b)) that states that BABA does not affect existing domestic content procurement preferences for infrastructure projects funded by federal financial assistance programs that meet the requirements of section 70914. EPA views the AIS requirements as meeting the “iron and steel” product requirements of BABA Section 70914, as they both include the key requirement that items made of iron and steel be wholly manufactured in the United States from the point of melting and/or pouring the iron or steel components through final manufacturing step. Because of the “Savings Provision” of Section 70917, the AIS

requirements satisfy the “iron and steel” requirements of BABA. For the programs that have AIS requirements, EPA intends to implement BABA requirements the same way for iron and steel items as it has done for AIS products.

For iron and steel products, does a manufacturer need to demonstrate compliance from initial melting through the finished product?

For iron and steel products, the BABA requirements are the same as the existing AIS requirements, in that all of the iron and steel in a covered product (that is, the product is comprised of more than 50 percent iron and steel by material cost) must be melted and poured in the United States and all subsequent manufacturing processes (such as grinding, rolling, bending, reheating, and casting) must occur in the United States.

Will EPA apply the same manufacturing standards for BABA iron and steel products as for the American Iron and Steel (AIS) requirements?

For AIS, EPA did not require raw materials used in the production of steel or iron to be domestically sourced. For BABA, EPA interprets the requirements to be the same. Like AIS, raw materials in the production of iron and steel subject to BABA requirements would not need to be domestically sourced. The key step for both AIS and BABA domestic iron and/or steel production is the initial melting/pouring (that is, the location of the furnace), which must be in the United States.

Will the certification process be similar to the process established for the American Iron and Steel requirements?

EPA expects the certification process for the BABA requirements to be very similar to that established for the AIS requirements. For iron and steel products, the process should remain the same for AIS and BABA. EPA recommends for manufactured products and for construction materials that certification letters include direct reference to the product/material content requirements under BABA, in addition to an affirmative statement verifying that the product meets the BABA requirements.

Will duplicate certification letters be required for AIS and BABA for iron/steel products?

Compliance with BABA requirements will be sufficient to demonstrate compliance with AIS requirements for iron and steel products. If a project is subject to BABA, the only demonstration of compliance necessary is with the BABA requirements, of which the iron and steel requirements are equivalent to those of the AIS statutory requirements: the iron or steel in a product made primarily or predominantly of iron and steel (comprising more than 50 percent iron and steel by material cost) must be melted and/or poured in the United States and all subsequent manufacturing processes must occur in the United States.

For products made of iron and steel, what is the difference between predominantly and primarily iron and steel?

EPA considers the terms “predominantly” and “primarily” to be interchangeable, such that a product is considered predominantly (or primarily) iron and steel if it contains greater than 50 percent iron and steel by material cost.

What is the definition of construction materials (with examples)?

From OMB Guidance M-22-11: “construction materials” include an article, material, or supply (other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; aggregate binding agents or additives; or non-permanent products) that is or consists primarily of:

- non-ferrous metals,
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), (including optic glass),
- lumber, and
- drywall.

For example, a plate of glass would be a construction material under BABA, but a framed window that incorporates the glass into a frame would be a manufactured product. Another common construction material for water infrastructure projects would be polyvinyl chloride (PVC) pipe and fittings. However, if PVC components are incorporated into a more complex product such as instrumentation and control equipment or a water treatment unit, those items would be manufactured products.

What are manufactured products (with examples)?

From OMB Guidance M-22-11: “...all manufactured products used in the project are produced in the United States—this means the manufactured product was 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, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation...”

The manufactured products category is anticipated to cover the majority of potential infrastructure products, including complex products made up of a variety of material types and components. Common manufactured products would include, but not be limited to, pumps, motors, blowers, aerators, generators, instrumentation and control systems, gauges, meters, measurement equipment, treatment equipment, dewatering equipment, actuators, and many other mechanical and electrical items. Other items may include anaerobic digesters, optical sorters, geomembranes, and liners.

Which category will valves fall under for BABA? Will it differ from the American Iron and Steel (AIS) requirements?

For programs that are subject to BABA and AIS, projects using valves should classify them as iron and steel products under BABA as long as their material cost is made up of more than 50

percent iron and/or steel. Valves with 50 percent or less iron and/or steel by material cost would be considered manufactured products under the BABA requirements.

In accordance with OMB Guidance M-22-11, an article, material, or supply should be classified into only one of the three categories: iron and steel, manufactured products, or construction materials. Under the AIS requirements, all valves made primarily of iron and steel (that is, those with iron and/or steel material cost greater than 50 percent) must comply with the AIS requirements. For BABA, EPA interprets Section IV of OMB Guidance M-22-11 to mean that iron and steel products are those items that are primarily iron and steel, the same as for the AIS requirements.

Does EPA have a list of products to be classified as “Iron and Steel” under BABA?

Although this list is not comprehensive, the following products were classified as AIS products if made primarily (more than 50 percent) of iron and/or steel by materials cost (for programs subject to both AIS and BABA, this list would be equivalent for “iron and steel” items or products under either requirement).

Products Likely Made "Primarily" of Iron and Steel to be Classified as Iron and Steel Under BABA		
Lined and Unlined Pipe	Lined and Unlined Fittings	Tanks
Flanges	Pipe Clamps and Restraints	Structural Steel
Valves	Hydrants	Pre-Cast, Iron/Steel Reinforced Concrete (of all types, regardless of iron/steel content percentage)
Manhole Covers and other Municipal Castings	Access Hatches	Ballast Screens
Iron or Steel Benches	Bollards	Cast Bases
Cast Iron Hinged Hatches	Cast Iron Riser Rings	Catch Basin Inlets
Cleanout/Monument Boxes	Construction Covers and Frames	Curb and Corner Guards
Curb Boxes	Curb Openings	Curb Stops
Detectable Warning Plates	Downspout Shoes	Drainage Grates
Drainage Grate Frames and Curb Inlets	Inlets	Junction Boxes
Lampposts	Manhole Rings and Frames	Manhole Risers
Meter Boxes	Service Boxes	Steel Hinged Hatches
Steel Riser Rings	Trash Receptacles	Tree Grates
Tree Guards	Trench Grates	Valve Boxes
Valve Box Covers and Risers	Access Ramps	Aeration Pipes and Fittings (separate from aeration/blowers)
Angles	Backflow Preventers/Double Check Valves	Baffle Curtains

Iron or Steel Bar	Bathroom Stalls	Beam Clamps
Cable Hanging Systems	Clarifier Tanks	Coiled Steel
Column Piping	Concrete Reinforcing Bar, Wire and Fibers	Condensate Sediment Traps
Corrugated Pipe	Couplings	Decking
Digester Covers	Dome Structures	Door Hardware
Doors	Ductwork	Expansion Joints
Products Likely Made "Primarily" of Iron and Steel to be Classified as Iron and Steel Under BABA		
Expansion Tanks (diaphragm, surge, and hydropneumatics)	Fasteners	Fencing and Fence Tubing
Fire Escapes	Flanged Pipe	Flap Gates
Framing	Gate Valves	Generic Hanging Brackets
Grating	Ground Testing Boxes	Ground Test Wells
Guardrails	HVAC Registers, Diffusers, and Grilles	Joists
Knife Gates	Ladders	Lifting Hooks, J-Bar, Connectors within, and Anchors for Concrete
Lockers	Man Baskets and Material Platforms	Manhole Steps
Mud Valves	Municipal Casting Junctions	Non-mechanical (aka stationary) Louvers and Dampers
Overhead Rolling Doors/Uplifting Doors (manual open, no motor)	Pipe Connectors	Pipe Hangers
Pipe Pilings (any type of steel piling)	Pipe Spool (pipe, flanges, connectors, etc.)	Pipe Supports
Pitless Adaptors	Pre-fab Steel Buildings/Sheds (simple structure, unfurnished)	Pre-stressed Concrete Cylinder Pipe (PCCP)
Railings	Reduced Pressure Zone (RPZ) Valves	Roofing
Service Saddles	Sheet Piling	Sinks (not part of eyewash systems)
Solenoid Valves	Stairs	Static Mixers
Stationary Screens	Surface Drains	Tapping Sleeves
Telescoping Valves	Tipping Buckets	Trusses
Tubing	Valve Stem Extension	Valve Stems (excluding handwheels and actuators)
Wall Panels	Wall Sleeves/Floor Sleeves	Welding Rods
Well Casing	Well Screens	Wire
Wire Cloth	Wire Rod	Wire Rope and Cables

Does EPA have a list of products that could be made “primarily” of iron and steel but would be classified as “manufactured products” under BABA?

Although this list is not comprehensive, the following products would be considered “manufactured products” under the BABA requirements, even if the item might be composed primarily of iron and steel by materials cost (note, these items are not subject to the AIS requirements):

Products Likely Made "Primarily" of Iron and Steel to be Classified as Manufactured Products Under BABA		
Actuator Superstructures/Support Structures	Aeration Nozzles and Injectors	Aerators
Analytical Instrumentation	Analyzers (e.g., ozone, oxygen)	Automated Water Fill Stations
Blowers/Aeration Equipment	Boilers, Boiler Systems	Chemical Feed Systems (e.g., polymer, coagulant, treatment chemicals)
Chemical Injection Quills	Chemical Injectors	Clarifier Mechanisms/Arms
Compressors	Controls and Switches	Conveyors
Cranes	Desiccant Air Dryer Tanks	Dewatering Equipment
Dewatering Roll-offs	Disinfection Systems	Drives (e.g., variable frequency drives)
Electric/Pneumatic/Manual Accessories Used to Operate Valves (such as electric valve actuators)	Electrical Cabinetry and Housings (such as electrical boxes/enclosures)	Electrical Conduit
Electrical Junction Boxes	Electronic Door Locks	Elevator Systems (hydraulic, etc.,)
Products Likely Made "Primarily" of Iron and Steel to be Classified as Iron and Steel Under BABA		
Emergency Life Systems (including eyewash stations, emergency safety showers, fire extinguishers, fire suppression systems including sprinklers/piping/valves, first aid, etc.)	Exhaust Fans	Fall Protection Anchor Points
Fiberglass Tank w/Appurtenances	Filters (and appurtenances, including underdrains, backwash systems)	Flocculators
Fluidized Bed Incinerators	Galvanized Anodes/Cathodic Protection	Gear Reducers
Generators	Geothermal Systems	Grinders
Heat Exchangers	HVAC (excluding ductwork)	HVAC Dampers (if appurtenances to aerators/blowers)

Products Likely Made "Primarily" of Iron and Steel to be Classified as Manufactured Products Under BABA		
HVAC Louvers (mechanical)	Intake and Exhaust Grates (if appurtenances to aerators/blowers)	Instrumentation
Laboratory Equipment	Ladder Fall Prevention Systems	Ladder Safety Posts
Lighting Fixtures	Lightning and Grounding Rods	Mechanical or Actuated Louvers/Dampers
Membrane Bioreactor Systems	Membrane Filtration Systems	Metal Office Furniture (fixed)
Meters (Including flow, wholesale, water, and service connection)	Motorized Doors (unit)	Motorized Mixers
Motorized Screens (such as traveling screens)	Motors	Pelton Wheels
Pipeline Flash Reactors (similar to injectors)	Plate Settlers	Precast Concrete without Iron/Steel Reinforcement
Furnished Pre-fab Buildings (such as furnished with pumps, mechanics inside)	Presses (including belt presses)	Pressure Gauges
Pump Cans/Barrels and Strainers	Pumps	Mechanical Rakes
Safety Climb Cable	Sampling Stations (unless also act as hydrant)	Scrubbers
Sensors	Sequencing Batch Reactors (SBR)	Steel Shelving (fixed)
Slide and Sluice Gates	Spray Header Units	Steel Cabinets (fixed interior/furniture)
Supervisory Control and Data Acquisition (SCADA) Systems	Tracer Wire	Valve Manual Gears, Actuators, Handles
Voltage Transformer	Water Electrostatic Precipitators (WESP)	Water Heaters
Weir Gates		

Is asphalt paving a covered product under BABA?

No. EPA interprets Section 70917(c) of the IIA to exclude asphalt from BABA requirements. Asphalt paving is a type of concrete composed of an aggregate material mixed with a binder (bitumen). EPA considers asphalt concrete to be excluded by section 70917(c) due to its similarities with cement and cementitious materials.

Are products and materials that purposefully decay or decompose (such as biodegradable coir material used for erosion control) considered permanently affixed items that are subject to BABA requirements?

No, BABA requirements do not apply to purposefully decaying and decomposing items, such as coir mats, or temporary shoring items not intended to be permanently affixed to or incorporated into a structure. According to the OMB Guidance (M-22-11), BABA “does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project[,] but are not an integral part of or permanently affixed to the structure.”

If a manufactured product is not readily available domestically, will EPA provide short-term “limited availability” product waivers?

EPA will address the unavailability of domestic products through the waiver process, including potential national short-term waivers for specific products, if appropriate. To the extent practicable and with the intent to maximize domestic market and supply chain development, EPA intends to address issues of broad product unavailability with targeted, time-limited, and conditional waivers, as prescribed in OMB Guidance M-22-11. EPA will follow its robust and thorough product research processes (those put into place for the AIS requirements for the SRF and WIFIA programs and expanded for the new BABA requirements) to identify and determine those products for which proposed national/general applicability waivers may be appropriate.

Who is responsible for documenting the 55 percent content requirement for manufactured products under BABA? What if the final manufacturer cannot trace or verify domestic origin for all components?

The manufacturer who signs a certification letter is responsible for documenting compliance with any of the three categories of products (iron and steel, manufactured products, or construction materials). For manufactured products, BABA requires that greater than 55 percent of the total cost of all components of the manufactured product be from domestic sources. EPA recommends that the certification letter for manufactured products document whether the item passes the content test in the final product along with a statement attesting to compliance with the BABA requirements for manufactured products.

How do final product fabricators document compliance when the final step of manufacturing may be simply assembling components?

It is acceptable, in many cases, especially for highly complex manufactured products that utilize many sub-components, for the final point of assembly to certify without using a “step certification” process. Multiple certifications (i.e., step certifications) or a singular certification can be used for a product, as long as the certifying official is willing to attest to the product’s compliance with BABA requirements at all stages of manufacturing.

Will Material Test Reports be acceptable in lieu of a BABA certification for iron and steel?

Material Test Reports (MTRs, commonly referred to as “Mill Certifications” or “Mill Certs”) provide the chemical composition of steel and iron from a mill or foundry. If an MTR accompanies the delivery of steel or iron to a project site with an invoice or bill of lading, EPA will consider it sufficient to demonstrate compliance (equivalent to a certification letter) as long as the MTR includes a manufacturer representative’s signature in addition to the location (city and state) of the mill/foundry. It is common for MTRs to be the first letter in a “step certification” if the product is further fabricated or painted, etc., by another manufacturer.

Can a manufacturer use a fillable certification letter for products?

EPA recommends that certifications be signed by representatives of the manufacturing entity. EPA does not oppose manufacturers using forms to internally develop letters within their company, thereby providing signed, non-manipulable certification letters to suppliers, distributors, and/or assistance recipients. A fillable form that can be changed by someone outside of the manufacturer after signature does not demonstrate compliance and may create compliance concerns for the manufacturer or assistance recipient.

Are product certifications from suppliers and distributors allowed?

EPA recommends that representatives of product manufacturers certify compliance and discourages suppliers and distributors from creating certification letters. EPA does not rule out the possibility that a third-party certification process, such as a certification by a distributor, may be viable. However, EPA is currently not aware of a system or proposed system that meets the EPA’s recommendations for documentation of product certification.

What is allowed under the BABA De Minimis waiver?

Products used in the project that cumulatively comprise no more than five percent of the total project will not be required to meet BABA regulations. This waiver is not additive with the existing American Iron and Steel national de minimis waiver.