# Build America, Buy America (BABA)

## Guidance for SRF Projects in North Carolina

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

*Selected\** projects with SRF agreements executed on or after May 14, 2022 (except the projects that were eligible for an Adjustment Period Waiver in 2022-2023).

\*Each year, the Division of Water Infrastructure (DWI) selects a finite number of projects whose total funding amount is equivalent to the federal capitalization grant afforded to North Carolina through the Environmental Protection Agency (EPA) for that year. DWI will inform the funding recipient of the selection of their project in the Letter of Intent to Fund.

This document is intended to outline how North Carolina Department of Environmental Quality (NCDEQ), Division of Water Infrastructure (DWI) will satisfy BABA requirements through the SRF program. Additional BABA information and implementation guidance can be found on EPA’s website at:

<https://www.epa.gov/cwsrf/build-america-buy-america-baba>

Recipients of subject SRF awards must submit an executed Certification for SRF Projects and a list of any products that may potentially require a waiver from EPA, with their Bid Information Package. The recipient will not receive any funds if the State has not received these items.

Manufacturers can use the template “Manufacturer’s Compliance Certification” to document that their products and materials are “produced in the United States”.

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# Build America, Buy America (BABA)

## Certification for SRF Projects

Recipients of subject SRF awards must submit **this executed form** (and, if applicable, a list of materials/products that will potentially request a project-specific waiver)with their Bid Information package to the State SRF program in order to receive funding.

The  certifies that their contractors performing construction, alteration, maintenance, and repair of the public treatment works or drinking water systems under project number will comply with Build America, Buy America ("BABA") Act. Pub. L. 117-58, sections 70911-70917. The Act expands the coverage and application of American Iron and Steel requirements in Federal financial assistance programs for infrastructure.

Contractor

Funding Recipient

(print)

(print)

(sign and date)

(sign and date)

# Build America, Buy America (BABA)

## Project-Specific Waiver Instructions

Project-specific waivers may be issued on a case-by-case basis by EPA in coordination with Office of Management and Budget – Made in America Office 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%.

In its Memorandum titled: *“Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs”*, released November 3, 2022, the EPA provides answers to questions related to:

* Situations where a project-specific waiver may need to be obtained (cost, unavailability, etc.)
* Who may apply for a waiver
* What a waiver request should include
* The waiver application/approval process

The Memorandum can be found at:

<https://www.epa.gov/system/files/documents/2022-11/OW-BABA-Implementation-Procedures-Final-November-2022.pdf>

Project-specific waiver requests should generally include:

(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 EPA’s consideration of the waiver (e.g., if relevant for SRF projects: whether the project is designated as an equivalency project, the date the plans and specifications were submitted to the state, the date of construction initiation, expected date of project completion, any special considerations such as local zoning and building ordinances, seismic requirements, or noise or odor control requirements).

In a typical waiver process, the contractor will have an idea about what products/materials will likely need a waiver prior to bidding. In the bid package, the contractor should submit a list of such potential items. Upon the start of the construction phase, waiver request(s) should be submitted to the DWI designated inspector, who will review the request(s) for completeness, then forward the request(s) to EPA. EPA will conduct a market research, issue a public notice for 15 days, evaluate the request in collaboration with the Made in America Office, then publish the signed waiver on its website and inform the state about the decision.

Funding Recipients, Engineers, and Contractors should be aware of potential schedule impacts when applying for a project-specific waiver.

Once the waiver is received from EPA, funding recipient will need to maintain the waiver for three years after project closeout.

# Build America, Buy America (BABA)

## Materials and Products Covered by BABA

The following list is not comprehensive.

|  |  |  |
| --- | --- | --- |
| 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 |
| Digestor Covers | Dome Structures | Door Hardware |
| Doors | Ductwork | Expansion Joints |
| 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 Extensions | 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 |

The following list is not comprehensive.

|  |  |  |
| --- | --- | --- |
| 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.,) |
| 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) |
| 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 |  |  |

# Build America, Buy America (BABA)

## Manufacturer’s Compliance Certification for Materials Covered By BABA

Manufacturer’s Company Name:

Company Address:

SRF Project name and project number:

Subject: Build America, Buy America (BABA) Certification

I , certify that the following products were produced at the following location, or that steps in the production of the listed products, occurred at the following location:

Location:

Product Step in production (Final production, melting, bending, etc.)

1)

2)

3)

Therefore, these materials are in full compliance with the Build America, Buy America requirements, as mandated in EPA’s State Revolving Fund programs.

(signature and title of company representative) (date)

# Build America, Buy America (BABA)

**De Minimis General Applicability Waiver\* List**

**(To be used by Contractor)**

|  |  |
| --- | --- |
| **Item** | **Cost** |
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**Total De Minimis Cost:**

**Total Cost of Project:**

**De Minimis Cost Is % of total project cost**

\*NOTE: The De Minimis General Applicability Waiver, which does not require prior approval by EPA, must not exceed 5% of the total cost of the project. For simplicity, “total project cost” for each contractor is the contract price at the start of construction, re-evaluated at the close of the contract, if requested by the contractor.

The materials that can be listed on this waiver can be ferrous (iron or steel), manufactured products, or construction materials.