



U.S. EPA OFFICE OF WATER LUNCH AND LEARN SERIES

WAIVERS OF AIS AND BABA REQUIREMENTS

FEBRUARY 2026



Clean Water
State Revolving Fund

Disclaimer

This presentation cannot substitute for official guidance, nor can it change existing guidance or statute. The purpose of this session is to provide an information on the domestic preference requirements, including American Iron and Steel and the Build America, Buy America Act, as currently understood by the Environmental Protection Agency. We hope to provide you with a better understanding of the requirements, with the caveat that we are human and any potential incorrect statements or errors we may make during this presentation do not change official statute or guidance.

THE AMERICAN IRON AND STEEL REQUIREMENT (AIS)

AIS requires the use of iron and steel products that are produced in the United States for the construction, alteration, maintenance, or repair of a public water system or treatment works.

THE BUILD AMERICA, BUY AMERICA ACT (BABA)

“[N]one 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.**”

WAIVER CATEGORIES

National (AIS) / General Applicability (BABA)

- Approved waivers apply to all eligible projects
- Projects do not need to submit requests to EPA HQ to use these kinds of waivers
 - The EPA recommends documenting use of a nat'l/gen app waiver in the project files.
- Projects should check with their State or other funding authority before using

Project-Specific

- Applies to specific projects or specific products
- Projects must submit waiver requests for project-specific waivers

Important Note: Before using any waiver, a project must perform due diligence, making every effort to locate a domestic version of the product which meets the project's technical specifications

AIS

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that—

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent shall not apply in any case or category of cases

BABA

(b) Waiver.—The head of a Federal agency that applies a domestic content procurement preference under this section may waive the application of that preference in any case in which the head of the Federal agency finds that—

- (1) applying the domestic content procurement preference would be inconsistent with the public interest;
- (2) types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

WAIVER TYPES

Availability (AIS) / Nonavailability (BABA) Waiver

- Product(s) meeting the technical specifications of the project is not available or will not be available in a reasonable time

Public Interest Waiver

- Applying the domestic preference requirements would be inconsistent with the public interest

Unreasonable Cost Waiver

- The inclusion of AIS/BABA compliant products increases the total project cost more than 25%

PROJECT-SPECIFIC WAIVERS

Who may submit a waiver request and how?

EPA's Drinking and Clean Water State Revolving Fund Programs:

- ✓ Assistance Recipients and their authorized representatives submit requests to their state finance authority

Community Grants, WIFIA, and other direct grant programs:

- ✓ Assistance recipients and their authorized representatives submit requests to the EPA

Who may not submit a waiver request?

- × Manufacturers
- × Suppliers/Distributors

PROJECT-SPECIFIC WAIVERS

Information needed for availability/nonavailability project-specific waiver request:

- ✓ Description of foreign and domestic materials
- ✓ Unit of measure
- ✓ Quantity
- ✓ Price
- ✓ Time of delivery or availability
- ✓ Project schedule
- ✓ Location of project
- ✓ Name and address of the proposed supplier
- ✓ Detailed justification for the use of foreign products
- ✓ Documented due diligence
- ✓ Relevant technical specifications
- ✓ Comparable past approved waivers

Additional Information for BABA Waiver request:

- ✓ Recipient Name and/or Unique Entity Identifier (UEI)
- ✓ Federal Financial Assistance Identification Number (FAIN)
- ✓ Federal Financial Assistance Listing Name (ex: Congressionally Mandated Projects)
- ✓ Federal Financial Assistance Listing Number
- ✓ Federal Financial Assistance Funding Amount
- ✓ Total Cost of Infrastructure Expenditures
- ✓ Federal Financial Assistance funding amount and total estimated infrastructure funding amount
 - If different, identify the specific or estimated amount expected to be waived.

AIS Waiver Checklist

Review Items	Yes	No	N/A	Comments
Cost Waiver Requests <ul style="list-style-type: none"> • Does the waiver request include the following information? <ul style="list-style-type: none"> — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products — Relevant excerpts from the bid documents used by the contractors to complete the comparison — A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market • Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%? 				
Availability Waiver Requests <ul style="list-style-type: none"> • Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested? <ul style="list-style-type: none"> — Supplier information or other documentation indicating availability/delivery date for materials — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials • Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers? • Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information) • Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include: <ul style="list-style-type: none"> — Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State — Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States — Correspondence with construction trade associations indicating the non-availability of the materials • Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits? 				

Information Checklist for Project-Specific BABA Waiver Requests

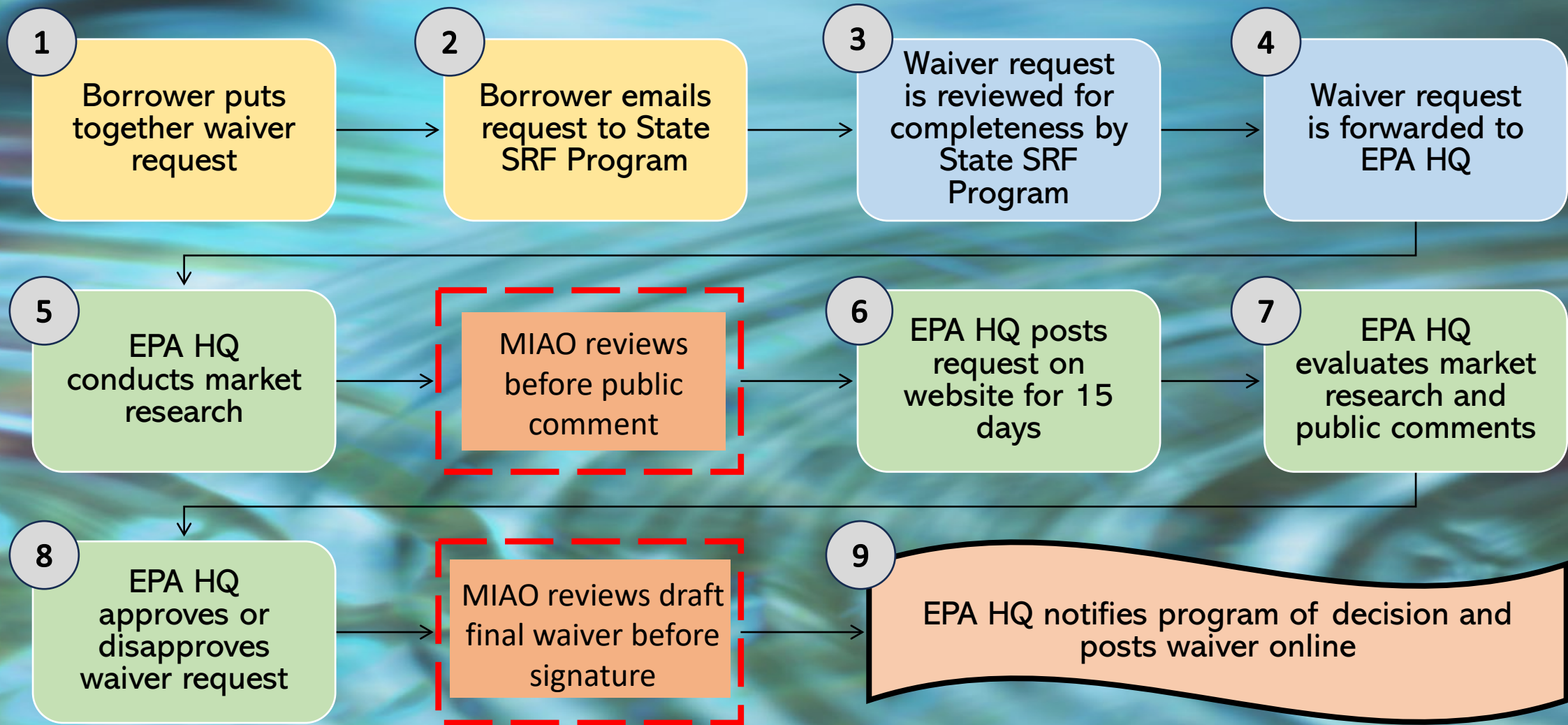
The purpose of this checklist is to help ensure that necessary information is submitted to EPA. EPA recommends that States/Regions/Programs review this checklist carefully and provide all appropriate information to EPA, where available. **This checklist is for informational purposes only and does not need to be included as part of a waiver application.**

Complete?			Items	Comments
Yes	No	N/A	General Information (All Project-Specific Waivers)	
			1. Waiver requests should include the following information:	
			a. Clear indication of the type of waiver being requested (nonavailability, public interest, unreasonable cost)	
			b. Brief summary of the project	
			c. Description and explanation of the need for the waiver (Please make use of the De Minimis Waiver)	
			d. Identification and quantity of the product(s) or product categories in question	
			e. Engineering specifications and project design considerations relevant only to product(s) in question (not vendor catalog pages)	
			f. Approximate cost of products to be waived	
			g. Approximate project materials cost	
			h. Approximate total project cost	
			i. Project schedule including project completion date	
			j. Recipient's Unique Entity Identifier (UEI), if known	
			k. Breakdown of the sources of funding and their amounts	
			l. Breakdown of federal financial assistance vs. non-federal amounts	
			2. Waiver request was submitted according to the instructions in the Office of Water Build America, Buy America Act Implementation Procedures at: epa.gov/baba/build-america-buy-america-baba-epa-programs	
			3. Waiver request has been acknowledged by the federal financial assistance recipient	
Yes	No	N/A	Nonavailability Waiver Requests	
			1. In order to avoid waiver processing delays, please do not submit separate waiver requests for each product.	
			2. Waiver requests should include the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the products for which the waiver is requested:	
			a. The BABA product category of each product, if known (manufactured product, construction material, iron and steel)	
			b. Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for products	
			c. Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers, a list of contacted suppliers, and copies of correspondence between the project and manufacturers or suppliers.	
			d. Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of products	

BABA Waiver Checklist

Full Checklist on the EPA's [website](#)

STEPS IN THE WAIVER PROCESS



Some State
Some Department
For The Applicant

April 9, 2050

Build America, Buy America

Project-Specific Non-Availability Waiver Request

Project Name: WTP Upgrades

Loan Contract Number: DWL1000-0

Borrower: Some City in Some State

County and Municipality: This is where we are, Some County, Some State

To Whom it May Concern,

This Project is funded in part by Drinking Water State Revolving Funds and subject to Build America, Buy America (BABA) Act requirements. Some city is requesting a project-specific non-availability waiver as described below. Per EPA guidance, this letter includes a project summary; description and explanation of waiver need; summary of due diligence; quantity and materials of products; specifications and design considerations; and approximate unit and project costs.

PROJECT SUMMARY

The Project consists of construction of a new booster pump station as identified in the bid documents. The project is located near the intersection of some two streets in some city. The work includes, but not limited to, procurement of project materials, constructing a new treatment building, mechanical piping, pump installation, electrical, controls, site work, landscaping, permitting, coordination with agencies and utilities companies, and providing reports to applicable funding agencies.

The project construction cost is estimated at \$2,000,000

DESCRIPTION AND EXPLANATION OF WAIVER NEED

The Some City and the Recipient are requesting the following waiver and need:

Waiver Type: a nonavailability waiver due to types of manufactured products not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

Example Waiver Request
Submitted by the state on
behalf of the project
Includes loan details
Includes project
summary, cost, and
timeline

Product	NAICS	PSC	Quantity	Unit Price
Vertical-Multistage Pumps	486990	M1NE / 4610	4	\$10,000
Pressure Switch Pressure	2213	6685	1	\$1,000
Transmitter	2213	6685	1	\$3,000
Flow Meter	2213	6680	1	\$11,000

SUMMARY OF DUE DILIGENCE

Some Contracting Company (contractor) has evaluated the above products for BABA compliance through examination of manufacturer catalogs, technical data, and marketing materials, and personal communication with various sales representatives and manufacturers. Some Contracting company's findings are summarized in the table below.

Product	Manufacturers	Response
Vertical Multistage Pumps	Pumps Co.	The Pumps Co. Pumps are NOT BABA Compliant.
Pressure Switch	Pressure Switch Co.	Per the vendor, the pressure switch manufacturer does not provide BABA compliance certificates due to partial resources being from non-US sources.
Pressure Transmitter	Transmitters Inc.	Per the vendor, the pressure transmitter is US made but manufacturing company will not issue a BABA compliant cert due to 75% of the product is from non-US sources.

Example Waiver Request

Note that the letter includes all the items needed for the project – please don't submit multiple waiver requests for the same project!

Includes projects due diligence on research

Attachments include technical specifications

HELPFUL TIPS!

- Please do not submit a separate, non-availability waiver request for each product. The list of products and the relevant sections of the project specifications can be submitted by the project as one waiver.
- Please provide the extracted sections from the project specifications. Please don't send the entire project specifications. We love to see the projects underway, but we cannot (and in most cases we will not) read an entire project spec to extract the relevant sections.

De Minimis Waivers

- Allows for a small number of products of an unknown or non-domestic origin to be used
- **AIS De Minimis:**
 - Up to 5% of **total materials cost** of project
 - No item can be more than 1% of total materials cost of project
 - Items must be incidental



De Minimis Waivers

- Allows for a small number of products of an unknown or non-domestic origin to be used
- **BABA De Minimis:**
 - Up to 5% of **total project cost**
 - Iron & Steel items should meet AIS De Minimis requirements



BABA De Minimis List Example

Total Project Cost: \$1,000,000

5% Project Cost Limit (Max. De Minimis Allowed): \$50,000

<u>Item #</u>	<u>Description</u>	<u>Quantity</u>	<u>\$/Unit</u>	<u>Total Cost</u>
1	4" PVC drain pipe	50 LF	\$10	\$500
2	Brass pressure relief valve	3	\$50	\$150
3	Electrical actuator/valve assembly	1	\$3,000	\$3,000
4	6-ft chain link fence w/gate framework and gates	1	\$7,500	\$7,500
5	5 x 2 precast boxed culvert	40 LF	\$500	\$20,000
6	Filter fabric	900 SQ YD	\$5	\$4,500
			Total:	\$35,650

***Note: This list and the items on it are only examples. There is no required format for recipients to follow when documenting their de minimis products list.**

Amended SRF Design Planning Waiver

- Waives projects with FY22 that initiated design planning prior to May 14, 2022
- SRF and community grants projects funded with FY22 or FY23 funds may be eligible if they complete one of 8 milestones prior to May 14, 2022
- Consult EPA HQ where there is complexity: BABA-OW@EPA.gov



Amended SRF Design Planning Waiver

- 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 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 a state and/or federal funding 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

*Milestones should be documentable



AMI Water Meter Waiver

- Phased Approach; Expires December 19, 2027

Phase 1:

- Length: Two (2) years
- From the date of approval, purchases of AMI meters and all components (the entire “manufactured product”) are waived.

Phase 2:

- Length: One (1) year
- Two (2) years from the date of approval, AMI meter housings shall be domestically manufactured or produced components and will be excluded from the waiver scope.



OTHER GENERAL APPLICABILITY / NATIONAL WAIVERS

- **AIS National Product Waiver for Minor Components in Iron and Steel products**
 - Allows the product manufacturer to include non-domestic, minor iron/steel components in AIS-compliant products (up to 5% of materials cost of product)
- **BABA Minor (Ferrous) Components of Iron and Steel Products**
 - Identical to AIS Minor Components Waiver
- **BABA Small Projects Waiver**
 - For projects where assistance agreements or subawards under assistance agreements are less than \$250k
 - Threshold is based on EPA-funded portion of the project
- **BABA Public Interest Waiver to Indian Tribes**
 - Waives all BABA requirements for awards or subawards to tribes at or below \$2.5 Million

RESOURCES

Contact us:

- SRF_AIS@epa.gov (underscore!)
- BABA-OW@epa.gov (hyphen!)

EPA Websites:

- www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement
- www.epa.gov/baba

QUESTIONS AND DISCUSSION