



Webinar #2 Recap
Waiver of AIS and BABA Requirements
February 19, 2026

On February 12, the U.S. EPA Domestic Preference team hosted the second webinar in its Lunch and Learn series, focusing on Waivers under the Build America, Buy America (BABA) program. While the session was not recorded due to EPA guidelines, we provided a detailed overview of the waiver process, guidance on applying for project-specific waivers, and a walkthrough of existing general applicability waivers. Below are the key points for those who were unable to attend.

Key Takeaways

1. Overview of the Domestic Preference Requirements

EPA's Office of Water implements two domestic preference requirements:

- **American Iron and Steel (AIS)** – Applies to Clean Water and Drinking Water State Revolving Funds (SRF), WIFIA, and certain community grants. Requires specific iron and steel products used in public water systems or treatment works to be produced in the United States.
- **Build America, Buy America (BABA)** – Applies broadly to federal infrastructure funding, including SRF equivalency projects. Requires all iron, steel, manufactured products, and construction materials used in a project to be domestically produced.
- Projects comply by:
 - A. Sourcing domestic products with certification letters, or
 - B. Utilizing an approved waiver.

2. Types of Waivers

EPA outlined two major categories:

1. GENERAL APPLICABILITY (NATIONAL) WAIVERS

These waivers are pre-approved at the agency level and are available for use without project-level application. Projects do not need to submit requests to use them, though EPA can help determine eligibility.

A. De Minimis Waiver (AIS and BABA)

Allows a small number of products of unknown or non-domestic origin to be used. Projects should make every effort to purchase domestic products before using this waiver.

AIS De Minimis Criteria:

- a) Items must be incidental to the project.
- b) Total de minimis items may not exceed 5% of total materials cost.
- c) No individual item may exceed 1% of total materials cost.

BABA De Minimis Criteria:

a) Total de minimis items may not exceed 5% of total project cost (not just materials cost).

b) No incidental requirement. Threshold is based solely on cost.

B. Amended SRF Design & Planning Waiver (BABA)

Applies to SRF and certain community grant projects using FY2022 or FY2023 funding that met one of eight documented planning/design milestones prior to BABA's effective date (May 14, 2022). Projects receiving FY2024 or later cap grant/equivalency funding are not eligible.

C. AMI Water Meter Waiver (BABA)

A product-based, phased waiver for Automated Metering Infrastructure (AMI) water meters.:

a) Phase 1 (through Dec. 20, 2026): All components of AMI water meters are waived.

b) Phase 2 (Dec. 20, 2026-Dec. 20, 2027): Meter housing must be domestic; all other components waived.

D. Minor Components Waiver (AIS & BABA)

Allows manufacturers (not for contractors or projects) to include up to 5% non-domestic iron and steel components (by materials cost) in otherwise compliant iron/steel products.

E. Small Projects (BABA)

Waives BABA for projects where the assistance agreement or subawards is less than \$250,000 (based on EPA funding amount).

F. Tribal Waivers (BABA)

Waives BABA requirements for all awards and subawards to tribes at or below \$2.5 million

2. PROJECT-SPECIFIC WAIVERS

These waivers apply only to the project that requests them and must be granted by the federal funding agency. There are three types:

A. Non-Availability Waiver (“Availability” for AIS/ “Non-Availability” for BABA)

- Most common type of project-specific waiver.
- Appropriate when a compliant product is not available, cannot be sourced in a reasonable timeframe, or cannot meet the project's technical specifications.
- EPA conducts market research to verify domestic unavailability before approving.
- Best practice: Submit all needed products in one waiver request, as it is difficult to add items later.

B. Public Interest Waiver

- Appropriate when compliance with domestic preference requirements is not in the public interest (e.g., emergency or extenuating circumstances).
- Very high bar for approval; evaluation process is longer and more complex.
- Typically longer review process.

C. Cost Waiver

- Applies if using domestic products would increase total project cost by more than 25%.

- Extremely rare — only one has ever been approved under AIS. May occur more under BABA.

3. Waiver Application Best Practices

- Submit waiver requests **early**, especially for BABA projects.
- Include all applicable products in **one comprehensive request** (rather than multiple submissions).
- Provide detailed specifications, quantities, costs, and due diligence documentation.
- Include all relevant contacts (state, region, applicant, consultants).
- Extract only relevant sections of project specifications (do not submit full spec books).
- BABA waivers include additional review by the Made in America Office, which can extend timelines.

4. Questions & Answers (Asked by participants at end of the webinar)

Questions	Answers
If items on the de minimis list exceed 5%, is a waiver request needed?	Yes. Once the 5” threshold is reached, items over the limit require a project-specific waiver.
What does “incidental” mean for the AIS de minimis?	An item is incidental if it is not inherent to the core purpose of the project. Example: chain-link fencing on a wastewater treatment upgrade is incidental; ductile iron pipe is not.
What is the timeline for EPA to complete market research?	As little as one week for simple requests, longer for requests with many products. EPA shares results promptly and discusses next steps.
Can partial waiver approvals occur?	Yes, in a practical sense. If EPA’s market research identifies domestic suppliers for some, but not all, products in a request, those products are removed from the waiver. The remainder may still be approved.
Does each de minimis item need prior approval?	No. De minimis is self-executing. Projects maintain a list and ensure thresholds are met; no pre-approval is required per item.
Is pre-cast concrete covered by AIS?	Yes. Pre-cast concrete (which contains rebar) is a listed iron and steel product under AIS. Rebar is widely available domestically and must remain in the US supply chain.
Can projects funded post-FY2023 use the amended SRF design planning waiver?	No. Only projects receiving FY2022 or FY2023 equivalency funds are eligible for this waiver.
Who is responsible for BABA compliance if a recipient is unfamiliar with the requirements?	Compliance is required of all federal infrastructure funding recipients. It is communicated through funding agreements.

	EPS is available to help walk recipients through the process.
Is the design planning waiver still available?	Yes, but it is phasing out. It remains available for FY22/FY23 funded projects meeting the design milestones; it does not apply to FY24 and beyond.

5. Waivers and Additional Resources

- Resources available on EPA's website include waiver checklists for AIS and BABA, example waiver request letters, de minimis list templates, example contract language, and guidance documents. Search "EPA BABA resources" to locate the dedicated resources page.
- EPA encourages participants to submit project-specific questions to the official BABA and AIS inboxes at baba-ow@epa.gov and/or srf_ais@epa.gov