



The Impact of Build America, Buy America (BABA) on U.S. Infrastructure Projects

How Hydro-Dyne Empowers American Infrastructure
Growth as a Certified BABA Manufacturer

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On November 15, 2021, the IIJA (the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law or BIL) was signed into legislation. This law will provide \$1.2 trillion in funds to update our nation's infrastructure and includes \$55 billion in funds to the water and wastewater sector.

The Build America, Buy America Act (BABA), part of the IIJA, requires all the iron, steel, manufactured products, and construction materials used in infrastructure projects to be produced in the United States.

Under BABA, "compliant manufactured products" means:

- the manufactured product(s), from the initial melting stage through the application of coatings, 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

Previous legislation, most notably AIS and ARRA, include requirements for using products produced in the United States:

- **American Iron and Steel Requirement (AIS)** – The AIS provision requires that recipients of the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) funding must use iron and steel products produced in the United States. This requirement applies to projects for constructing, altering, maintaining, or repairing a public water system or treatment works.
- **American Recovery and Reinvestment Act of 2009 (ARRA)** – ARRA was fiscal stimulus legislation that provided \$831 billion in spending to alleviate the impacts of the 2008 recession. The Act included \$85 Billion for public infrastructure, targeting local projects that had suffered from lack of funding.

The BABA requirements of the IIJA greatly expanded the Buy America requirements in previous legislation to apply to all infrastructure projects in the United States that receive federal funds, including structures, facilities, and equipment for drinking water and wastewater systems.

In contrast to AIS and ARRA, BABA does not provide waivers for electromechanical equipment, nor does it allow for substantial transformation (when a process is applied to an item that causes it to change its name, character, or use).

The BABA requirements of the IIJA are statutorily directed and specified "in perpetuity" unless rescinded or modified by Congress. The requirements are purposefully designed to extend beyond the current round of funding to all future infrastructure spending.

Understanding when a project requires compliance with BABA

A simple guide to help determine whether your project falls under BABA requirements is to identify the project's funding source. All projects receiving federal funds, including State Revolving Fund (SRF) and Water Infrastructure Finance and Innovation Act (WIFIA) projects, are subject to BABA restrictions.

BABA does provide several waivers, including De Minimus (projects are allowed a small percentage of incidental products that originate from outside the U.S.), Small Project General Applicability, Brownfield projects, and selected EPA programs. Guidance has stressed that waivers for products or projects will be limited.

SRF and WIFIA also provide waivers for projects that can prove the detailed design planning (such as preliminary engineering reports, master plans, basis of design reports, and technical design memorandum) was initiated before the law went into effect on May 14, 2022.

BABA compliance requirements for manufacturers

Equipment manufacturers must be prepared to demonstrate their commitment to meeting BABA compliance guidelines, beginning with their proposals during the design, selection, and procurement stage. In addition, they must show verification of the manufacturing locations of specific products. Manufacturers must identify the domestic sources for the primary materials used in their products and verify that the total costs of their products (excluding labor) are derived from at least 55% of domestic sources.

Upon project completion, the manufacturer must issue a certification letter that contains five parts:

- A project identifier, including name, location, contract number, or project number
- The identity of the product(s) being supplied to the project
- A statement attesting that the product(s) supplied are compliant with BABA requirements (this represents the heart of the certification)
- Location(s) of manufacturer(s) being certified (must include the city and state of the final point of manufacturing in the United States at a minimum)
- Signature of company representative making the certification

Accountability for meeting BABA requirements

The responsibility for meeting BABA requirements is not limited to just one person or entity but is spread across all parties involved in an infrastructure project affected by the law, including the:

- Funding recipient
- Consulting engineer
- Contractor
- Manufacturers and their suppliers

These parties cannot simply rely on “Made in the USA” claims made by manufacturers but must demand a signed compliance certificate or a performance bond if the project’s certificate is not signed.

During the design stage, the owner and consulting engineer are at risk in choosing a supplier that will not provide compliant materials. During the procurement stage, purchasing is responsible for ensuring BABA compliance with all products acquired for the project. Project owners should expect audits, records requests, and inquiries into project compliance documentation.

Any failure or fraudulence in the supply chain could result in non-compliance and result in increased costs, delayed project completion, replacement of a product on site or jeopardize funding.

Common BABA compliance mistakes include:

- Manufacturers failing to reference specific project and product information
- Suppliers or customers failing to independently verify a manufacturer’s compliance, opting to rely on the word of the manufacturer instead
- Manufacturers misstating their certification requirements or not identifying the specific BABA requirements
- Missing certification letters from suppliers

Hydro-Dyne’s commitment to BABA compliance

Hydro-Dyne is uniquely positioned to meet the policy requirements of the IIJA/BIL and BABA legislation as it is currently written, without waiting for waivers and potential exemptions. Our products, including all screening, screening handling, and grit removal equipment, are classified as manufactured products, and all design, engineering, manufacturing, assembly, and testing of our equipment are performed at our corporate headquarters and production facility in Clearwater, Florida.

As nearly all our U.S.-based municipal projects fall under federal funding sources, we can assure our clients that all our products are BABA compliant without any deviations from our standard supply or increases in costs and delivery time.

Examples of compliance

Some methods manufacturers can use to verify whether a product qualifies as Build America, Buy America include:

- Determine if more than 55% of the total cost of all components of the manufactured product were produced in the U.S. This includes melting, refining, forming, rolling, drawing, finishing, fabricating, and assembly. The current guidance by OMB has clarified that manufacturer's labor does not count towards the cost calculations to meet the 55% threshold.
- Raw materials, such as iron ore, do not have to be produced in the U.S.

Summary

The Build America, Buy America (BABA) Act, part of the Infrastructure Investment and Jobs Act (IIJA) in 2021, was designed to strengthen Made in America laws, increase the industrial capabilities in the U.S., support high-paying jobs, and protect national security. BABA ensures that iron, steel, manufactured products, and construction materials used in federally funded infrastructure projects are produced in the United States.

- Manufacturers are required to certify that their products used in these projects comply with BABA requirements, and all stakeholders involved (contractors, consulting engineers, and project owners) are responsible for ensuring compliance.
- Hydro-Dyne believes in and is committed to Build America, Buy America.
- Individuals responsible for planning, procuring, and implementing water and wastewater screening equipment for municipal projects can rely on Hydro-Dyne's BABA compliance and our high-quality standards.

At Hydro-Dyne Engineering, we have been sourcing domestic materials to ensure quality and availability for years. For us, **'Build America, Buy America' is just 'Business as Usual.'**

Want to know more about Hydro-Dyne Compliance?

Contact us **(813) 818-0777** or visit **www.hydro-dyne.com/baba**

