



Northern Border Regional Commission



Build America Buy America Act (BABAA)

www.nbrc.gov

September 2026

Build America, Buy America Act (BABAA)

The Build America, Buy America Act (hereafter "BABAA") – enacted on November 15, 2021 – sets forth a domestic content procurement preference ("Buy American Preference" hereafter referred to as "BAP") for infrastructure programs funded with Federal dollars. As the NBRC routinely funds infrastructure projects as part of its Catalyst grant program and anticipates funding infrastructure projects as part of its Bipartisan Infrastructure Legislation (BIL) programs beginning in FY'23, BABAA governs future Northern Border Regional Commission (NBRC) infrastructure investments.

A Buy America preference only applies to the iron and steel, manufactured products, and construction materials used for the infrastructure project under an award. Specifically, [IIJA §70914\(a\) of Pub. L. 117-58](#), instructs Federal agencies to ensure that "none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured product, and construction materials used in the project are produced in the United States."

Build America, Buy America Act (BABAA)

- Applies to all federal financial assistance projects for infrastructure.
- Applies even if funded by Federal and non-Federal funds under one or more awards.
 - Cognizant agency leads the waiver process
 - Cognizant agency is federal agency contributing the greatest amount of funds to the project
- Federal agencies may not know when other federal agencies are contributing to project, please tell us. Otherwise you will have to go through the process separately with each agency.

What Products Are Covered?

- *Iron and Steel*
 - All manufacturing processes from initial melting through application of coating occurred in the U.S.
- *Construction Materials*
 - All manufacturing processes for the construction material occurred in the U.S.
- *Manufactured Products*
 - Product manufactured in the U.S.
 - The cost of the components of the manufactured product that are mined, produced, or manufactured in the U.S. is greater than 55% of the total cost of all components of the manufactured product

BABAA

How do projects comply?

Certification letter

- Letter asserting that all manufacturing processes for the purchased product occurred in the U.S.

Waiver

- Waivers may be granted to waive the BABAA requirement for certain categories of cases

How is product compliance be demonstrated?

Required: Contractor certification

1. Contract provision explaining BABAA requirements
2. Contractor self-certification
3. Suggested language at [NBRC.gov/content/BABAA](https://www.nbrc.gov/content/BABAA)

Suggested: Manufacturer certifications

1. A project identifier (name, location, grant number)
2. The identity of the products being supplied to the project
3. Locations of manufacturing being certified i.e. final point of manufacturing
4. Signature of company representative making the certification (on company letterhead, signature can be electronic)
5. Statement asserting the products supplied are compliant with BABAA requirements (include which category of products they are certifying)

BABAA

Project/ product specific waivers

- Nonavailability (most common)
 - Requires market research from grantee. Can not rely on research from another waiver/ agency
- Public interest
- Unreasonable cost

General applicability waivers

- De Minimis
 - All projects may use up to 5% of project costs for non-domestic products
- Small Award
 - Is the total cost of the project from all federal sources equal to or less than \$350k
- Minor components
 - Allows up to 5% non-domestic in BABAA-compliant product

BABAA

Who may apply for a waiver and how?

- Grantees (LDD not expected to assist but may)
- NBRC does not process waiver requests from suppliers, distributors or manufacturers
- Submit waiver request to NBRC. Form available at [NBRC.gov/content/BABAA](https://www.nbrc.gov/content/BABAA)
 - It is crucial to include a detailed written justification for the use of a non-domestic product. Grantees should show specific evidence of a good-faith effort to procure a domestically produced product.
- Approved general applicability waivers do not require a separate waiver request
 - De Minimis waiver
 - Minor Components
 - Small Award

Waiver Timeline

1. Recipient puts together waiver request
2. Recipient emails request to program manager
3. Waiver is reviewed for completeness
4. NBRC may be have to then conduct market research
5. MIAO reviews before public comment period
6. NBRC posts request on website for 15 days
7. NBRC evaluates research and comments
8. NBRC approves/ disapproves waiver request
9. NBRC sends draft final for MIAO final decision
10. NBRC announces decision and posts waiver online

BABAA Resources

If you are a current NBRC grantee and have specific questions related to BABAA and your project, please reach out to the NBRC team via admin@nbrc.gov and note your NBRC award name and number in the subject line.

[BABAA Guidance Overview](#)

[BABAA Waiver Request Form](#)

[BABAA Contract Level Compliance and Certification Letters](#)

[BABAA FAQ](#)