



NORTHERN BORDER REGIONAL COMMISSION Build America Buy America Act (BABAA)

1. Q: What is BABAA?

A: The Build America, Buy America Act – enacted on November 15, 2021 – sets forth a domestic content procurement preference (“Buy American Preference” referred to as “BAP”) for infrastructure programs funded with Federal dollars

2. Q: What is BAP?

A: BAP is the “Buy American Preference”, and it applies to the iron and steel, manufactured products, and construction materials used for the infrastructure project under an award

3. Q: How is infrastructure defined?

A: “Infrastructure” in the context of BABAA includes the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property.

4. Q: What materials are included in the BAP?

A: All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

All manufactured products used in the project are produced in the United States. This means the manufactured product 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, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

5. Q: How do I know if BABAA applies to my project?

A: Under NBRC financial assistance programs, the BABAA requirements apply to:

1. New awards made on or after May 8, 2023.

2. New funding NBRC obligates to existing awards or through renewal awards on or after May 8, 2023.

The BABAA requirements went into effect May 14, 2022. However, NBRC determined that it was in the public interest to issue a general applicability waiver of the BABAA requirements allowing for a temporary adjustment period for NBRC, its recipients/ subrecipients, and other stakeholders to transition to the new compliance process for iron, steel, manufactured products, and construction materials. This waiver expired on May 8, 2023. The BABAA domestic preference requirements therefor apply to awards or funds obligated on or after May 8, 2023.

6. **Q: Who do BABAA requirements apply to?**

A: (1) Non-Federal Entities as defined as [2.CFR 200.1](#) (2) Requesting funding for an infrastructure project (3) The project involves construction, alteration, maintenance, or repair of infrastructure in the United States.

7. **Q: How does a recipient comply with BABAA requirements if a project is funded by a mix of NBRC and other federal agency funding?**

A: OMB [M-24-02](#) provides guidance; "To avoid a need for duplicative waiver requests from entities that receive funding for one infrastructure project through multiple federal agencies, the federal agency contributing the greatest amount of federal funds for the project should be considered the "Cognizant Agency for Made in America" and should take responsibility for coordinating with the other federal awarding agencies."

8. **Q: Can I apply for a BABAA waiver?**

A: NBRC can provide BABAA waivers to specific projects on a case-by-case basis with approval from the Made In America Office (MIAO) when:

- Applying the domestic content procurement preference would be inconsistent with public interest ("public interest waiver");
- The 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 ("nonavailability waiver");
- 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 ("unreasonable cost waiver").

9. **Q: What information is required in a waiver?**

A: The MIAO requires specific information to be included in the waiver request. Please see the BABAA page of NBRC's website for detailed guidance on NBRC's process as well as a fillable PDF of the waiver form.

10. **Q: How do I apply for a BABAA waiver?**

A: BABAA waivers are not automatic, nor can a waiver be sought before a grantee has undertaken their procurement process to determine if one of the available

waivers (nonavailability, unreasonable cost, or public interest) is an option. A grantee must demonstrate that there was a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers.

11. Q: Where will notice of waivers be posted?

A: All NBRC approved waivers will be posted on NBRC's website at <https://www.nbrc.gov/content/BABAA>.

12. Q: Does NBRC currently have waivers to the BABAA requirements?

A: Yes, the NBRC waivers can be found at <https://www.nbrc.gov/content/BABAA>.

13. Q: Does the 25% cost waiver apply to the entire project cost or the cost of a product?

A: NBRC may waive the application of a Buy America preference if 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%. In their waiver application, Grantees should:

- Demonstrate that BABA compliance increases total project cost by more than 25%.
- Determine the additional cost of BABA compliant products.
- Determine the dollar amount to be waived.
- Demonstrate that no domestic alternatives are available within the project budget.

14. Q: How is the De Minimis Waiver applied?

A: The De Minimis Waiver allows a project to incorporate products of foreign or unknown origin up to 5% of the cost of materials subject to BABAA, with a cap of \$1 million. The De Minimis percentage allowance will be based on the final materials costs subject to BABAA. Recipients and subrecipients are encouraged to track De Minimis items to ensure they are following applicable limitations.

15. Q: What resources are available to learn more about BABAA?

A: NBRC has conducted BABAA training with our Local Development District (LDD) regional partners as well as included guidance on BABAA in our new grantee training for our 2023 awardees. In addition to those training materials, NBRC has dedicated a tab of our website to BABAA, which includes current available resources and will continue to be updated as additional information becomes available.

16. Q: How long will it take to complete the waiver process?

A: Once NBRC has received a satisfactorily completed waiver it must follow an internal review process at NBRC. If the determination is made that the project qualifies for a waiver, the waiver must be made available on NBRC's website for a minimum of 15 days in case of public comment. Following the public review period, NBRC must send the waiver to MIAO for final approval. Once that approval is received from the MIAO, NBRC will contact the grantee with further guidance.

17. Q: What construction materials in an infrastructure project does the Buy America Preference (BAP) apply to?

A: Each construction material is followed by a standard for the material to be considered “produced in the United States as follows:

- (a) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- (b) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent, plastic or polymer-based inputs until the item is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.
- (c) Composite building materials. All manufacturing processes, from initial combination of constituent materials until the composite material is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.
- (d) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- (e) Fiber optic cable. All manufacturing processes, from the initial preform fabrication stage through fiber stranding and jacketing, occurred in the United States.
- (f) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through fiber stranding, occurred in the United States.
- (g) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
- (h) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

18. Q: Where can I find language for inclusion in contract agreements and procurement documents?

A: Sample language for inclusion in recipient contracts, including detailed information on the responsibilities of the grantee, the project’s authorized official, the project’s architect or engineer, contractors, etc. can be found on NBRC’s website.

19. Q: Where can I find detailed information on the administration’s Made in America efforts?

A: www.whitehouse.gov/omb/management/made-in-america/

20. Q: Who should I contact at NBRC if I have specific BABAA questions?

A: Please send all BABAA related questions to admin@nbrc.gov. Please note your NBRC award name and number in the subject line.