



Northern Border Regional Commission

What is BABAA?

- 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
- “A Buy America preference...only applies to the iron and steel, manufactured products, and construction materials used for the infrastructure project under an award”
- Federal agencies are required 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”

Note: As of November 08, 2022, the NBRC instituted a *General Applicability Waiver* of the Build America, Buy America Act to determine specific impacts of these provisions on NBRC projects and to prepare internal procedures to streamline compliance. As of May 08, 2023, the waiver expired, therefore all 2023 NBRC awardees are subject to BABAA requirements.



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Defining Infrastructure

“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.

Agencies should treat structures, facilities, and equipment that generate, transport, and distribute energy - including electric vehicle (EV) charging - as infrastructure.



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Materials Included in the “Buy America Preference”

- 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.



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Waivers

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”).

Note: If a project is funded by multiple Federal entities, the entity representing the largest investment in the project is considered the “Cognizant Agency for Made in America,” and should take responsibility for the coordination of any waivers produced.



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Next Steps

- NBRC will be working closely with grantees/LDDs to identify projects that must adhere to BABAA requirements to ensure provisions are considered during procurement activities
- NBRC will coordinate with grantees/LDDs to identify where a BABAA waiver may be appropriate
- NBRC will create and distribute a BABAA 'FAQ' document to be used as a reference tool for BABAA compliance

Note: For additional BABAA information please reference Executive Order [14005](#) "Ensuring the Future Is Made in All of America by All of America's Workers"



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QUESTIONS

