

Build America, Buy America 101

For NBRC grant recipients

July 22, 2024





Northern Border Regional Commission

What we will cover today:

- What is BABAA?
- How do projects comply?
- Does my project fall under a waiver?
- Resources?
- Questions?



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Build America, Buy America Act (BABAA)

- “None of the funds made available for a Federal financial assistance program for infrastructure...may be obligated for a project unless all of the **iron, steel, manufactured products, and construction materials** used in the project are produced in the United States.”
- Applies to all federal financial assistance projects for infrastructure.
- Applies to an entire infrastructure project, even if it is funded by both Federal and non-Federal funds under one or more awards.
- “Project” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the U.S.
- “Infrastructure” includes:
 - Rehabilitation of buildings and real property
 - dams, ports, harbors and other maritime facilities
 - Water systems (drinking water and wastewater)
 - Construction and improvements of roads, highways, bridges
 - Utility installation and broadband infrastructure improvements



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What Products Are Covered?

The following products used in covered infrastructure projects **MUST** be produced in the United States:

- 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



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How can 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



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<u>Compliance Roles</u>	
Manufacturers	Provide signed certification letters for each BABAA compliant product
Contractors	Verify products used on-site are compliant prior to installation
Grantees	Grantees should ensure procurement policies and procedures implement the Buy America preference requirements. Collect compliance documentation for products received at the project site/ maintain documentation.
NBRC	Support projects and oversee compliance



How can product compliance be demonstrated?

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 BABA requirements (include which category of products they are certifying)



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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 sources equal to or less than \$250k
- Minor components
 - Allows up to 5% non-domestic iron or steel components in BABAA-compliant product

Project/ product specific waivers:

- Nonavailability
- Public interest
- Unreasonable cost



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Who may apply for a waiver and how?

- Grantees
- NBRC does not process waiver requests from suppliers, distributors or manufacturers
- Submit waiver request to NBRC. Form available at NBRC.gov/content/BABAA
 - It is crucial to include a detailed written justification for the use of a non-domestic product. Grantees should show 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



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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



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Resources:

- OMB BABAA Guidance Memo; M-24-02; <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>
- OMB – Final Guidance – 2 CFR 184; <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-184>
 - Definitions of key terms
 - Discusses determining the costs of components for manufactured products
 - Additional construction materials added
- NBRC website; www.nbrc.gov
- NBRC email; admin@nbrc.gov
- OMB/ MIAO Website: www.madeinamerica.gov



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Questions and Comments