



**Northern Border
Regional Commission**

**2024 SPRING ROUND
NEW GRANTEE TRAINING
Session 2**

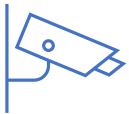
**National Environmental Policy Act (NEPA)
Build America, Buy America Act (BABAA)**

July 22, 2024

www.nbrc.gov



HOUSEKEEPING REMINDERS



We are **recording**
today's training
session.



Please keep your
microphone muted
during the training
unless you are asking a
question during the
Q&A.

Cameras are optional.



Please use the chat
function to share any
technical issues. We will
not be using the chat
function for questions.



We have plenty of
time for Question
and Answer
scheduled.



The detailed
PowerPoint will be
available to you after
the training session
along with all the
resources discussed.



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Welcome – Andrea Smith

National Environmental Policy Act (NEPA) Austin Rizzo, The Clark Group (NBRC Environmental Consultant)

Build America, Buy America Act (BABAA) – Rebecca Dourmashkin, NBRC Grant Attorney

Final Q&A, Review of Next Sessions & Wrap-up – Andrea Smith

NBRC Grant Administration Resources & Key Terms

TODAY'S SESSION OVERVIEW



NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

SESSION OBJECTIVES:

- What is NEPA?
- Overview of NEPA requirements

Presenter: Austin Rizzo, The Clark Group (Contracted NBRC Environmental Consultant)



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- The Clark Group – Environmental Consultants
 - Work on behalf of NBRC



THE CLARK GROUP, LLC



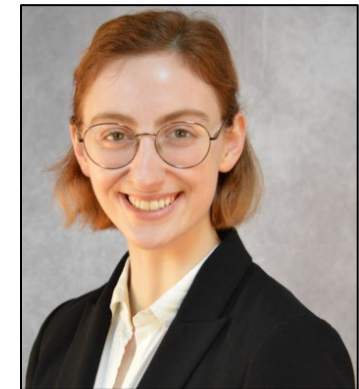
LISA MAHONEY
President



AUSTIN RIZZO, PH.D.
Project Manager



PATRICK BLANCHARD
Associate



SARAH LECLAIR
Associate

- Ensure NBRC and grantees are compliant with environmental regulations
 - Primarily, the NEPA Statute
 - NEPA compliance is necessary for ALL NBRC-funded projects



What is NEPA?

- National Environmental Policy Act (NEPA) – 1970
 - Promote the protection, preservation, and enhancement of the environment.
 - Growing concerns about the environmental impacts of large-scale development projects
- Purpose:
 - Requires federal agencies to consider the environmental impacts of their actions and decisions before they act.
- NEPA does not dictate an agency's decisions or actions.



Look before you leap.



Umbrella Statute

• Other Federal Requirements

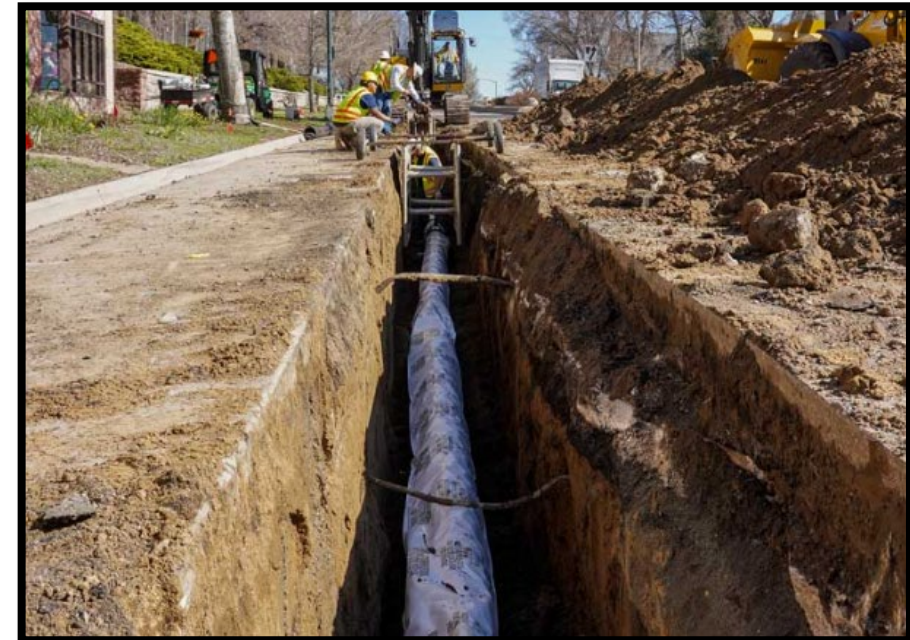
- Floodplain – 8-step required
- Wetlands – 8-step required
- Endangered Species – Section 7
USFWS Consultation
- Cultural Resources – Section 106
Consultation





What triggers NEPA?

- Federal agencies must consider the potential impacts of **major federal actions** and reasonable alternatives on the human environment
- **Major Federal Actions** – Activities that are undertaken, funded, authorized, or approved by a federal agency.
- NEPA applies to NBRC-funded projects



Impacts on the Human Environment





Levels of NEPA analysis

Level 1: Categorical Exclusion (CATEX) The project is pre-determined by the federal agency not to have a significant impact on the human environment.

Level 2: Environmental Assessment (EA): The project impact is unknown or does not have a reasonably foreseeable significant effect on the quality of the human environment.

Level 3: Environmental Impact Statement (EIS): The project has a reasonably foreseeable significant effect on the quality of the human environment.



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Understanding NEPA Implementation Across Federal Agencies

1. Varied Implementation:

Each federal agency implements the NEPA differently.

2. Agency-Specific Procedures:

Agencies are required to adhere to their own NEPA procedures and guidelines.

3. Example: USDA vs. NBRC:

- **USDA Experience:** A project categorized as a CATEX under USDA regulations.
- **NBRC Regulations:** The same project may not be considered a CATEX under NBRC regulations.

4. Takeaway:

Experience with NEPA procedures in one agency does not guarantee the same outcomes in another agency.



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Categorical Exclusion (CATEX)

- Renovations/Replacement
 - Do not change the functional use of property
- Demolition
 - (non NRHP eligible structures)
- Additions
 - (on adjacent disturbed land)
- Acquisition and installation of equipment
- Small new construction projects
 - (on previously disturbed land)

Environmental Assessment (EA)

- Renovations
 - (that change function use of property)
- Demolition
 - On NRHP places or eligible places
- Additions
 - (on undisturbed lands)
- Larger new construction



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Categorical Exclusion (CATEX)

- Brief review
 - < 1 month to develop
- No public comment period
 - (unless another federal requirement is triggered)

Environmental Assessment (EA)

- Robust review
 - 6-12 + months to develop
- 30-day public comment period



Making the NEPA Determination for a project



- CATEX or EA**
- Additional Requirements?**
 - Section 106
 - Section 7
 - 8-Step Analysis



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- See NEPA Intake Form

NBRC NEPA INTAKE FORM

The National Environmental Policy Act (NEPA) requires that federal agencies consider the potential environmental impacts of their actions before implementation or spending funds on the proposed action. You must complete this initial NEPA Intake Form as part of your NBRC application to provide NBRC Staff with project information relevant to the NEPA process. Please provide attachments to support the information provided on this form, as needed.

Note: Completion of this form does not satisfy NEPA, but it does help NBRC to determine what NEPA analysis will be required. If your project is funded, the NEPA process must be complete before NBRC will issue a Notice to Proceed.

Entity applying for funding:		
Point of contact (POC):		Date:
Project / NEPA Status Overview		
Has this project been awarded other state/federal funding? (See two rows below if anticipated) <i>If yes, please list the other federal funders here and provide agency POC contact information (include attachment if the space provided below is not sufficient):</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Agency #1: Funding Program: POC Name: POC Email:	Agency #2: Funding Program: POC Name: POC Email:	Agency #3: Funding Program: POC Name: POC Email:
Does this project anticipate receiving other federal/state funding (but has not received confirmation yet)? <i>If yes, please list the other state/federal funders, the funding program (if known), and the anticipated date for notification of funding decision:</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Is a NEPA process currently underway or complete for this project as required by other federal funding? <i>If yes, please fill in the following information:</i> Federal Agency: POC at Agency: POC Email Address: Status of NEPA (e.g., in progress, complete):		<input type="checkbox"/> Yes <input type="checkbox"/> No



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CATEX Determination



NBRC/TCG



The Clark Group will complete a CATEX Determination Form for the project.



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- Additional Federal Requirements



8-Step – for Floodplains & Wetlands

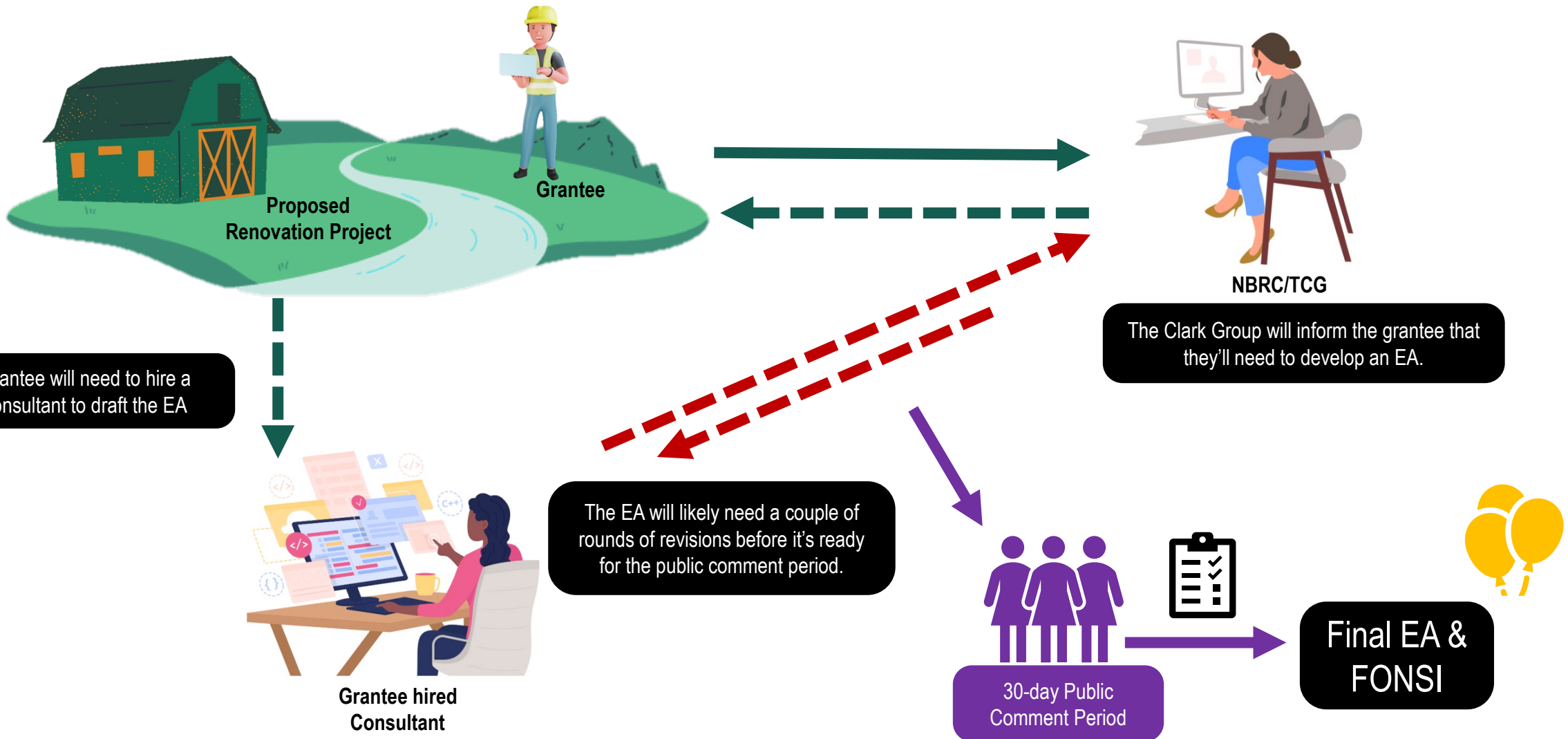


Section 106 – Historic Structures (or eligible structures)



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EA Determination





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The Environmental Assessment Process

1.) Hiring a consultant – to create *NEPA* Environmental Assessments

- ~ \$10,000-\$15,000 (based on project details)
- Work with NBRC to receive PNTF \$
- Preliminary design plans for NEPA may also require PNTF \$





The Environmental Assessment Process

- 2.) EA Template – Utilize the provided template, which includes detailed instructions, guidance, and examples.
- 3.) EA Draft Review Process – Generally, 2-4 reviews are necessary
- Each review by TCG usually takes 1-2 weeks

Draft Environmental
Assessment

Delete "Draft" prior to completing the Final EA

Grantee Name

Project Name

Grant Program

Award #: NBRC-**XX-XXXX**

Month Year

Prepared By:

1



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The Environmental Assessment Process

4.) 30-Day Public Comment Process – Allows the public to review and provide feedback on the EA and the project.

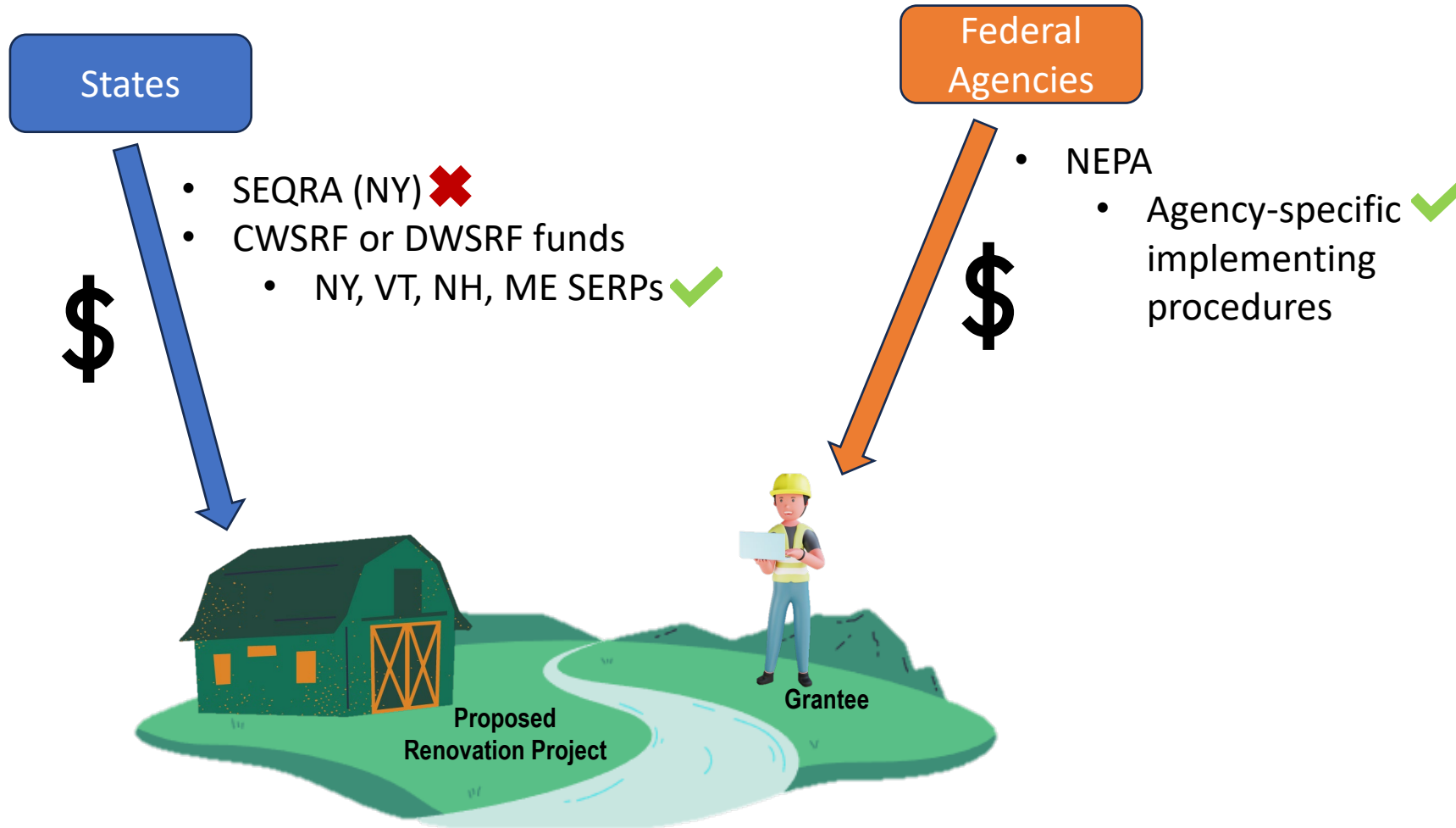
5.) Finding of No Significant Impact (FONSI) – NEPA Hold lifted – and all funds released.





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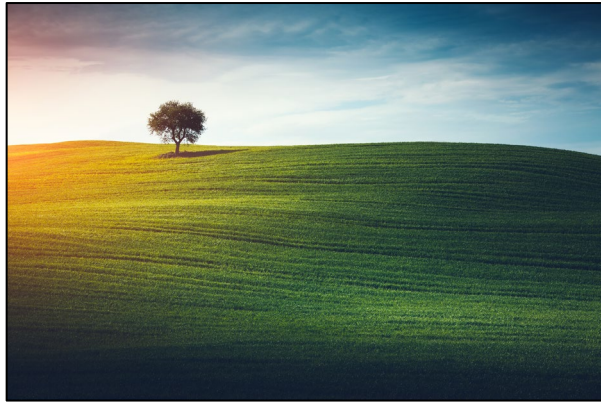
Other Funding Agencies & NEPA-like Requirements





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- NEPA must be complete before the grantee makes an irreversible or irretrievable commitment to resources



Land



Property



Equipment



Services



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QUESTIONS & ANSWERS

Build America, Buy America 101

For NBRC grant recipients

July 22, 2024





BUILD AMERICA, BUY AMERICA ACT (BABAA)

SESSION OBJECTIVES:

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

NBRC Staff: Rebecca Dourmashkin, Grant Attorney



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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 & ANSWERS



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UPCOMING NEW GRANTEE TRAINING SESSIONS:

- **Session 3:** Wednesday, July 24, 2024, 10:00 -Noon Reporting and Reimbursements
- **Session 4:** Tuesday, July 30, 2024, 10:30-12:30 – Project Oversight (amendments, procurement)
- **Session 5:** Thursday, August 1, 2024, 1:00–3:00 – Closeout, Desk Reviews & Community Visits
- Reminder: The PowerPoint and Recording of all new grantee training sessions are available to view and download from NBRC’s website <https://www.nbrc.gov/content/resources>



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THANK YOU FOR YOUR TIME!

www.nbrc.gov



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NBRC Grant Administration Resources, Key Terms and NBRC Staff Information

www.nbrc.gov



Grant Administration Resources

Forms and Guidance:

- NBRC website – www.nbrc.gov
- NBRC Grant Administration and Compliance Manual available to view and download from www.nbrc.gov/content/administration

Human support:

NBRC Staff – admin@nbrc.gov

State Program Managers – [ME](#), [NH](#), [VT](#), [NY](#)

Your [Local Development District](#)



Grant Administration Resources

Other Resources:

- [2 CFR Part 200 – Requirements for Federal Awards](#)
- [40 USC Subtitle V. Regional Economic and Infrastructure Development](#)
- National Environmental Protection Act (NEPA) - <https://www.nbrc.gov/content/NEPA>



Key Terms

- **Period of Performance:** this is the start and end date of the project to be completed for the grant agreement between grantee and NBRC. Your executed grant agreement will indicate your project's performance period.
- **NBRC Grant Amount:** The grant amount cannot be increased for any reason. Overruns on projects are the responsibility of the grantee
- **Required Match/Cost Share:** This is the amount of other funds necessary to complete your project and that must be documented during the project period



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Key Terms

- **Indirect Cost Rate:** This is the approved rate that has been agreed upon by the grantee and their Federal Cognizant Agency for indirect costs. All invoices must use this rate for their invoices when specific services as outlined are performed by the grantee. This is NOT a rate to be used by any subcontractor or consultant
- **Budget:** Line items of expenditures. These line items may not be changed by the recipient without prior written approval by NBRC (2 CFR 200.308)
- **Grant Provisions:** The laws and agreements that a grantee is required to follow as part of the contract with a federal awarding agency



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NBRC Staff

- **Chris Saunders, Federal Co-Chair**
- **Rich Grogan, Executive Director**
- **Molly Taflas, Deputy Executive Director**
- **Andrea Smith, Program Director**
- **William Gallagher, Administrative Officer**
- **Marina Bowie, Program Manager, Forest Economy & Timber for Transit**
- **Adrienne Harrison, Program Manager, Catalyst**



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NBRC Staff

- **Elizabeth “Liz” Cross, Rural Healthcare Coordinator**
- **Sarah Demers, Program Coordinator**
- **Sarah Lang, Capacity Program Coordinator**
- **Jon O’Rourke, Senior Program Specialist**
- **Georgia Cassimatis, Program Specialist**
- **Casey Haynes, Program Specialist**
- **Malana Tamer, Program Specialist**
- **Ace Arroyo, Data Analyst**



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NBRC Staff

- **Alison Richard, Marketing Coordinator**
- **Rebecca Dourmashkin, Grant Attorney**
- **Rebecca Olechowski, Budget Analyst**