

Build America, Buy America Act Domestic Preference Overview

On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58 was signed into law. It includes the Build America, Buy America Act (BABA). BABA strengthens Made in America Laws, such as American Iron and Steel (AIS) and American Recovery and Reinvestment Act (ARRA). BABA is a relatively new requirement and guidance is evolving. Assistance recipients should monitor the Office of Management and Budget's (OMB) Made in America Office (MIAO) website for updates to guidance, waivers posted, and training materials. Existing guidance and additional information can be found in the following resources:

- [MIAO website](#)
- [OMB Guidance for implementing BABA](#)

Application of a Buy America Preference

BABA states that “[N]one 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.” Project means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States. This guidance applies to an entire infrastructure project receiving Federal financial assistance as defined in section 200.1 of title 2, Code of Federal Regulations, even if it is funded by both Federal and non-federal funding under one or more awards. New awards made on or after **May 14, 2022**, must comply with BABA requirements. Renewal awards and amendments obligating additional funds to existing awards that are executed on or after May 14, 2022, must also include a Buy America preference.

Articles, Materials, and Supplies for Infrastructure

A Buy America preference applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. There are three categories of covered items: iron and steel (See Products List section below), manufactured products, and construction materials.

Covered by Buy America Preference

Iron and steel: Items that are predominantly iron or steel. All manufacturing processes, from the initial melting stage through the application of coatings, must occur in the United States.

Manufactured products: Products manufactured in the United States and the cost of components 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.

Construction materials: These materials include non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall. All manufacturing processes for the construction material must occur in the United States.

NOT Covered by Buy America Preference

Temporary products and materials that are removed at or before project completion (temporary scaffolding, equipment, tools).

Equipment and furnishings such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of or permanently affixed to the structure.

Construction materials do not include cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents/additives.

Waivers

Federal agencies are responsible for processing and approving all waivers, including waivers requested by recipients and on behalf of subrecipients. Waivers are to be **targeted** to specific products and projects, **time-limited**, and **conditional** (waivers with specific conditions that support the policies of BABA). EPA may waive the application of the Buy American preference requirements in any case in which the head of the agency finds one of the following applies:

- **Public interest:** applying the domestic content procurement preference would be inconsistent with the public interest
- **Nonavailability:** Iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality
- **Unreasonable Cost:** 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.

Cognizant Agency: If a project has multiple funding sources, the agency contributing the greatest amount of Federal funds is considered the “cognizant agency.” This agency is responsible for consulting with the other Federal awarding agencies on waiver issues, waiver applications, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to the MIAO.

Project Specific Waivers

Based on how EPA has implemented other domestic preference programs (ARRA, AIS), if an assistance recipient determines they need a project specific waiver they should work with the project engineer or contractor to prepare a waiver application. Waivers will only need to be submitted to the cognizant agency. Waiver requests must include a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States and a certification 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.

Once a waiver application is submitted, it will be reviewed and posted for public comment for 15 days. MIAO will review the proposed waiver to determine if it is consistent with applicable law and policy. The agency will then notify the assistance recipient. Waivers may be rejected/granted in whole or part.

Products List

Below is a non-exhaustive list of AIS products where BABA requirements apply. Please note that both the AIS requirements and BABA apply to projects funded by Congressionally Directed Spending (CDS) and Community Project Funding (CPF) items in Appropriations Acts,¹ which are also referred to as Community Grants projects. If a product is “primarily” iron and steel in accordance with AIS this equates to the “predominantly” iron or steel requirement in BABA, and this includes the requirement that all the production processes beginning with melting must occur in the United States. Note also that for AIS, “construction materials” refer to iron/steel construction materials, only, but “construction materials” for BABA does not include predominantly iron or steel products. For example, valves that are “predominantly” iron or steel are considered iron and steel under BABA. Valves that are not predominantly iron or steel are considered manufactured products under BABA.

¹ On November 15, 2021, President Joseph R. Biden Jr. signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52. The Act requires that no later than May 14, 2022—180 days after the enactment of the IIJA—the head of each covered Federal agency shall 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 products, and construction materials used in the project are produced in the United States.” (Build America, Buy America (BABA) Act, P.L. 117-58, Secs 70911 - 70917). BABA requirements apply to State Revolving Fund assistance agreements. Based on the directive Congressional language (“Applicable Federal requirements that would apply to a Clean Water State Revolving Fund or Drinking Water State Revolving Fund project grant recipient shall apply to a grantee receiving a CPF grant under this section”), BABA requirements apply to Community Grants projects.

Table: Products List²

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| Listed Items <ul style="list-style-type: none"> Lined or unlined pipes Fittings Manhole Covers Hydrants Tanks Flanges Pipe clamps and restraints Valves Reinforced precast concrete Municipal castings (defined in more detail below) Structural steel (defined in more detail below) Construction materials (defined in more detail below) | | | |
| Municipal Castings <p>Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples include but are not limited to:</p> <ul style="list-style-type: none"> Access Hatches Ballast Screen Benches (iron or steel) Bollards Cast Bases Cast Iron Hinged Hatches Cast Iron Riser Rings Catch Basin Inlet Cleanout/Monument Boxes Construction Covers and Frames Curb and Corner Guards Curb Openings Detectable Warning Plates Downspout Shoes (Boot, Inlet) Drainage Grates Frames and Curb Inlets Inlets Junction Boxes Lampposts Manhole Covers, Rings and Frames, Risers Meter Boxes Service Boxes Steel Hinged Hatches, Square and Rectangular Steel Riser Rings Trash receptacles Tree Grates and Tree Guards Trench Grates Valve Boxes, Covers and Risers | | | |
| Structural Steel <p>Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.</p> | | | |
| Construction Materials <p>Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment, and systems. Some of these products may overlap with what is also considered “structural steel”. Examples include but are not limited to:</p> <ul style="list-style-type: none"> Wire rod Bar Angles Concrete reinforcing bar Wire Wire cloth Wire rope and cables Tubing Framing Joists, trusses, fasteners (i.e., nuts and bolts) Welding rods Decking Grating Railings Stairs Access ramps Fire escapes Ladders Wall panels Dome structures Roofing Ductwork Surface drains Cable hanging systems Manhole steps Fencing and fence tubing Guardrails Doors Stationary screens | | | |

² Products List will be revised upon finalization of BABA implementation guidance.