

Questions & Answers: Build America, Buy America (BABA) General Applicability Public Interest Waiver for EPA's Clean Ports Program

1. What is the purpose of the Clean Ports Program General Applicability Public Interest Waiver?

The purpose of this waiver is to ensure Clean Ports Program grant recipients can effectively carry out the EPA-funded activity in a timely manner, support existing domestic manufacturers as battery and fuel cell production comes online, accelerate emissions reductions in the communities near ports, and build the foundation for port decarbonization while promoting domestic port equipment manufacturing. The EPA believes that the limited duration and scope of this waiver provides an incentive to manufacturers to invest in increasing domestic capacity, while the waiver itself ensures a sufficient supply of mobile port equipment available for Clean Ports Program projects in the near-term.

2. What market research was conducted to support the proposed Clean Ports Program General Applicability Public Interest Waiver?

In May 2023, the EPA issued a Request for Information (RFI) to gather more information on the availability of zero emission technologies in the heavy-duty vehicle and port sectors, receiving over 100 unique comments. The comments received on technology availability and domestic manufacturing indicated that the current and near-term supply of Build America, Buy America (BABA) compliant domestic, zero emission, mobile port equipment is limited and insufficient to meet the anticipated demands of the grant program. Many respondents identified batteries or fuel cells as the main challenge with respect to meeting BABA requirements, but some respondents also noted the current use of domestic iron and steel in manufacturing this equipment.

In addition, the DOE conducted market analysis in February 2024 on the current state of manufacturing of zero emission port technologies. The DOE found that most electric drayage trucks, zero emission yard trucks, and other zero emission cargo handling equipment do not currently meet BABA requirements for 55 percent domestic content for manufactured products. The analysis indicated that drayage truck manufacturers would likely begin to meet the BABA content requirement starting in 2027 while certain types of cargo handling equipment may not meet BABA requirements due to limited domestic battery production until 2030. An analysis of battery cells shows that a significant share of

current battery manufacturing in the U.S. is for light-duty original equipment manufacturers, and these batteries are largely not available to drayage truck and cargo handling equipment manufacturers. The first U.S. medium- and heavy-duty specific battery cell plant is scheduled to start production in 2027.

3. Besides market research described in FAQ 2, what additional information did EPA use to inform the final Clean Ports Program General Applicability Public Interest Waiver?

On March 25, 2024, the EPA issued a notice proposing to issue this waiver and the comment period was open until April 15, 2024. The Agency received 54 comments during the public comment period of which seventy-six percent (76%) supported the EPA's public interest waiver for certain zero emission mobile port equipment. Comments were received from a variety of stakeholders, including port associations, port operators, and manufacturers, as well as other stakeholders and program participants.

Based on the market research described in FAQ 2, public comments, and discussions with Original Equipment Manufacturers (OEMs), the Department of Transportation (DOT), DOE, and other federal partners, the EPA finalized the general applicability public interest waiver on May 16, 2024.

4. What BABA requirements are being waived under the Clean Ports Program General Applicability Public Interest Waiver?

To be considered produced in the United States under BABA, manufactured products must be "manufactured in the United States", and the cost of the components mined, produced, or manufactured in the United States must be greater than 55 percent (55%) of the total cost of all components of the manufactured product.

EPA's Clean Ports Program General Applicability Public Interest BABA waiver specifies that:

- The 55% domestic content requirement can be waived for certain types of "zero emission mobile port equipment" (see FAQs 6 and 7 for information on what zero emission port equipment is covered by and excluded from the Clean Ports Program General Applicability Public Interest 55% domestic content waiver provision). This equipment must still be manufactured in the United States to be considered "produced in the United States" during the waiver period.
- Clean Ports Program funding recipients may also apply a supplemental de minimis waiver, waiving BABA compliance for fifteen percent (15%) of material costs attributable to zero emission mobile port equipment, except for the purchase of cranes.

There are, however, exceptions where the domestic content waiver provisions and timelines differ for yard trucks and ship-to-shore cranes. Also, some zero-emission cargo

handling equipment are excluded from the waiver of 55% domestic content requirement as described in FAQ 7 below.

5. What does “manufactured in the United States” mean and why does it matter?

While the Clean Ports Program general applicability public interest 55% domestic content waiver provision allows grantees to purchase certain types of zero-emissions mobile port equipment that does not meet the 55% domestic content BABA requirement, this equipment must still be manufactured in the United States unless covered by another waiver provision or waiver.

Consistent with 2 C.F.R. Part 184, a manufactured product is “**manufactured in the United States**” if the final manufacturing process is performed in the United States. This final manufacturing process will entail either (i) processing articles, materials, or supplies into a specific form or shape, or (ii) combining articles, materials, or supplies with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

6. What Clean Ports Program zero emission mobile port equipment is covered by the 55% domestic content waiver provision?

For the purposes of this 55% domestic content waiver provision in the Clean Ports Program General Applicability Public Interest Waiver, “zero emission mobile port equipment” is defined as the following:

- Zero emission cranes (excluding ship-to-shore cranes):
 - Rubber tire gantry cranes
 - Mobile harbor cranes
 - Rail-mounted gantry cranes
 - Automatic stacking cranes

Note: Ship-to-shore (STS) cranes where installation commences on or before December 31, 2026 must meet a 25% domestic content requirement; STS cranes where installation commences on January 1, 2027, and thereafter must achieve full BABA compliance. (See FAQ 8 for more background).

- Other zero emission cargo handling equipment (with the exception of equipment types listed below in FAQ 7 that are excluded from this waiver provision):
 - Bulk cargo handling equipment
 - Containerized cargo handling equipment
 - Straddle Carriers
 - Mobile shore power cable management systems
- Zero emission class 3-8 vehicles:
 - Drayage trucks

- Yard trucks (also known as terminal tractors, yard tractors, or yard hostlers)

Note: The 55% domestic content waiver provision will be phased out sooner for yard trucks (also known as terminal tractors, yard tractors, or yard hostlers). Expenditures incurred on or after the effective date of the final waiver for yard trucks where the contracted delivery date for the yard trucks is on or before December 31, 2026, and the equipment is delivered no later than July 1, 2027, may apply the 55% domestic content waiver provisions. However, thereafter, yard trucks must achieve full BABA compliance.

- Zero emission locomotives:
 - Switch locomotives
- Zero emission vessels:
 - Tugboats
 - Push boats
 - Pull boats
 - Ferries

7. What zero-emission equipment is excluded from the Clean Ports Program General Applicability Public Interest 55% domestic content waiver provision?

Only certain types of zero-emissions mobile port equipment are covered by the 55% domestic content waiver provision (see FAQ 6). While zero emissions mobile cargo handling equipment is generally covered, the following specific cargo handling equipment is excluded from the waiver of the 55% domestic content requirement (i.e., domestic content BABA requirements will still apply):

- Battery electric (BE) heavy forklifts 36,000lbs 24" & 48" Load Center (L.C.)
- BE heavy forklifts 55,000lbs 48" L.C.
- BE heavy forklifts 65,000lbs 48" L.C.
- BE heavy forklifts 92,500lbs 48" L.C.
- BE heavy forklifts 100,000lbs 48" L.C.
- BE loaded top-pick container handler (up to 6-high-stack and 90,000lbs)
- BE empty side-pick container handler (up to 8-high stack and 20,000lbs)
- BE reach stacker (up to 5-high stack and 99,000lbs)

This equipment is excluded because based upon feedback received in comments and discussions with OEMs, there appears to be an adequate supply of this equipment to meet the needs for the Clean Ports Program during the period of project performance. However, should federal grant recipients find that specific cargo handling equipment on this list is not available or does not meet their needs, project-level nonavailability waivers of BABA requirements remain an option.

In addition, this zero-emission mobile port equipment waiver does not apply to any fixed infrastructure, including but not limited to charging or hydrogen fueling infrastructure for zero-emission port equipment, such as electric vehicle charging equipment and shore power technology other than mobile cable management systems.

8. What are the waiver provisions for ship-to-shore (STS) cranes and why are STS cranes treated differently than other equipment?

Under the Clean Ports Program General Applicability Public Interest Waiver, the EPA is excluding the use of the supplemental de minimis waiver provision for the purchase of cranes. Additionally, ship-to-shore (STS) cranes have their own domestic content waiver provisions and timeline. Where STS crane installation begins on or before December 31, 2026, they must meet a 25% domestic content requirement. Thereafter, STS cranes must achieve full BABA compliance.

The Biden-Harris Administration recently issued an Executive Order (EO) to bolster the security of the nation's ports and a commitment to invest through the Bipartisan Infrastructure Law and the Inflation Reduction Act over \$20 billion into U.S. port infrastructure.¹ The exclusion of cranes from the supplemental de minimis provision and the separate domestic content waiver provision for ship-to-shore cranes is consistent with the EO and the Administration's goal of rebuilding the U.S.'s industrial capacity to produce port cranes with trusted partners. At least two OEMs indicated they are planning to onshore U.S. manufacturing capacity for certain type of crane production in the near-term.

Further, as discussed in the Notice of Funding Opportunity for the Clean Ports Program, recipients may not use program funds to purchase cranes manufactured by entities owned by, controlled by, or subject to the direction of a government of a foreign country of concern, or by entities that are headquartered in a foreign country of concern, as determined by EPA.

9. What does the Clean Ports Program General Applicability Public Interest Supplemental De Minimis waiver provision mean?

The supplemental de minimis waiver provision allows Clean Ports Program grant recipients to have BABA requirements waived on fifteen percent (15%) of material costs associated with the purchase of mobile equipment. For example, if a grantee received a \$100M grant where \$60M is to be spent on mobile equipment, the supplemental waiver could be used to waive BABA requirements for \$9M (15%) in cost of non-domestic zero emission mobile port equipment (other than cranes).

¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/21/fact-sheet-biden-harris-administration-announces-initiative-to-bolster-cybersecurity-of-u-s-ports/>

As noted in FAQ 4, the purchase of cranes is excluded from this supplemental de minimis waiver.

EPA continues to encourage grant recipients to seek out domestic suppliers prior to using the supplemental de minimis to maximize the use of domestic equipment.

10. How is the supplemental de minimis provision in this waiver different from EPA's existing De Minimis waiver?

EPA's [existing public interest De Minimis waiver](#) allows up to 5 percent of total project cost to be used on items that are not required to demonstrate compliance with BABA requirements. Under the Clean Ports Program General Applicability Public Interest Waiver, EPA is waiving BABA requirements for an additional 15 percent of the total material costs associated with zero emission mobile port equipment under the supplemental de minimis provision for Clean Ports Program funding recipients.

For example, if a Clean Ports Program grantee received a \$100M grant where \$60M is to be spent on mobile equipment, EPA's agency-wide De Minimis Waiver could be used to waive BABA requirements for up to \$5M in cost for infrastructure or mobile equipment items (5% of the total costs), and the supplemental waiver provision specific to the Clean Ports Program could be used to waive BABA requirements for an additional \$9M (15%) in cost of non-domestic zero emission mobile port equipment (other than cranes). In this example, a total of \$14M in purchases for this project would not be required to demonstrate compliance with BABA domestic requirements. In this scenario, at least \$46M in mobile equipment purchases would be required to meet the domestic manufacturing requirements in this waiver (i.e., must be domestically manufactured).

11. Are there other BABA waivers available for my project?

Grant recipients are encouraged to review EPA's BABA website for the latest information about waivers that are in effect: <https://www.epa.gov/cwsrf/build-america-buy-america-baba>.

12. What options are available if I am still unable to find zero-emissions equipment eligible for the Clean Ports Program that meets BABA requirements or is covered by a waiver?

Project-level waivers remain an option for selected grantees should existing waivers prove inadequate. For questions about project-level waivers for Clean Ports Program grant recipients, please contact BABA-OTAQ@epa.gov.

13. How long will this Clean Ports Program General Applicability Public Interest waiver be in effect?

This waiver applies to certain Clean Ports Program grantee expenditures for zero emission mobile port equipment that meets each of the following criteria:

- the contracted order date for the equipment is on or before December 31, 2027;
- the contracted delivery date for the equipment is on or before December 31, 2028; and
- the equipment is delivered no later than July 1, 2029.

NOTE: yard trucks and ship-to-shore cranes have different timelines than other equipment covered by the domestic content waiver provision (See FAQs 4 and 8 above).

Prior to the expiration of this waiver, the EPA may consider extending the delivery date requirement beyond July 1, 2029, on an—award-by-award basis for zero emission equipment that otherwise meets these criteria but for which the equipment delivery is delayed due to unanticipated supply chain issues or other factors.

14. How should I consider this waiver when preparing my application for EPA’s Clean Ports Program ZE Technology Deployment Competition?

In the Project Summary section of the workplan (Section 1.a.), applicants are asked to describe their domestic sourcing implementation plans. This should include a discussion of whether the project will rely on any BABA waivers, such as the Clean Ports Program General Applicability Public Interest Waiver. Applicants may also choose to consider the BABA waiver in their discussion of Risk Mitigation (Section 1.d.), particularly related to technology availability risks.

Questions about this document should be directed to BABA-OTAQ@epa.gov.