

OTAQ programs include, but are not limited to:

Diesel Emissions Reduction Act
Clean School Bus Program
Clean Ports Program
Clean Heavy-Duty Vehicles Program

MEMORANDUM

SUBJECT: Build America, Buy America Act (BABA) Implementation Procedures for EPA
Office of Transportation and Air Quality Federal Financial Assistance Programs

OVERVIEW

The following frequently asked questions (FAQs) are for federal financial assistance programs under the purview of the U.S. Environmental Protection Agency's (EPA's) Office of Transportation and Air Quality (OTAQ). Responses are based on the Build America, Buy America Act (BABA)¹, Office of Management and Budget (OMB) guidance, and EPA guidance, among other resources.

These FAQs will be added to or updated as necessary, including if subsequent regulations or guidance are proposed and finalized by the OMB². These FAQs are designed to assist federal financial assistance recipients and EPA project officers in determining whether BABA applies to projects receiving federal funding. Recipients are encouraged to work with their EPA project officer, and EPA project officers are encouraged to work with their headquarters contacts. For current information on BABA requirements and waivers, visit EPA's BABA website: <https://www.epa.gov/baba>. Questions may also be submitted to BABA-OTAQ@epa.gov.

OTAQ programs include, but are not limited to, grants³ or rebates awarded pursuant to:

- **Diesel Emissions Reduction Act (DERA)**
 - Program to incentivize and accelerate the upgrade or retirement of the nation's legacy diesel engine fleet.
- **Clean School Bus Program**
 - Program to incentivize and accelerate the replacement of existing school buses with clean and zero-emission school buses,
 - BABA applies to all clean and zero-emission school bus infrastructure, but not to the clean and zero-emission school bus itself.

¹ Build America, Buy America Act (BABA). Pub. L. No. 117-58, §§ 70901-52

² <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-184>; <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>;

³ Refer to the grant terms and conditions for BABA requirements.

- **Clean Ports Program**
 - Program to support the deployment of zero-emission port equipment and fueling infrastructure as well as climate and air quality planning at U.S. ports,
 - BABA applies to zero-emission equipment and zero-emission fueling infrastructure serving mobile equipment at ports.
- **Clean Heavy-Duty Vehicles Program**
 - Program to replace non-zero emission Class 6 and Class 7 heavy-duty vehicles with zero-emission (battery-electric or hydrogen fuel) vehicles, and installing infrastructure needed to charge or fuel zero-emission vehicles.

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SECTION 1: General Information

Q1.1: What is the Build America, Buy America Act (BABA)?

A1.1: The Infrastructure Investment and Jobs Act ("IIJA", or Bipartisan Infrastructure Law, "BIL"), Public Law. 117-58, which includes the Build America, Buy America Act (BABA) in Sections 70901-27, became law on November 15, 2021. BABA strengthens Made in America Laws and will bolster America's industrial base, protect national security, and support high-paying jobs.

BABA requires that on or after May 14, 2022, the head of each covered federal agency shall ensure that "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," (Section 70914(a)). EPA is a covered agency.

BABA applies to all federal financial assistance as defined in Section 200.1 of Title 2, Code of Federal Regulations, where funds are appropriated or otherwise made available and used for a project for infrastructure, regardless of whether the project is funded through IIJA or not and regardless of whether infrastructure is the primary purpose of the federal award.

Date Posted: 3/19/2025

Q1.2: What is "federal financial assistance"?

A1.2: Federal financial assistance means financial assistance that entities receive or administer typically in the form of grants, cooperative agreements, rebates, non-cash contributions or donations of property, direct assistance, loans, loan guarantees, and other types of financial assistance.

Date Posted: 3/19/2025

Q1.3: What is the effective date of BABA?

A1.3: BABA went into effect on May 14, 2022. All new, or amended, federal financial assistance awards for infrastructure projects made after this date are required to comply with BABA. Compliance includes application of existing, or the development of new, waivers.

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Q1.4: Does BABA end or sunset?

A1.4: No, it is a permanent law unless amended or repealed through enacted legislation.

Date Posted: 3/19/2025

Q1.5: Where can I find more information about BABA?

A1.5: Here are several useful references:

- EPA's BABA website: <https://www.epa.gov/baba>
- OMB's Made in America website: <https://www.madeinamerica.gov/>
- OMB's final Guidance on Buy American Preferences for Infrastructure Projects (2 CFR 184): <https://www.federalregister.gov/documents/2023/08/23/2023-17724/guidance-for-grants-and-agreements>
- OMB's Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure (M-24-02): <https://www.madeinamerica.gov>

It is recommended that stakeholders review these resources to better understand domestic sourcing requirements applicable to all infrastructure projects using federal financial assistance.

Date Posted: 3/19/2025

SECTION 2: Applicability

Q2.1: Does BABA apply to me?

A2.1: If the award recipient will be performing any activity related to the construction, alteration, maintenance, or repair—for example, installing, upgrading, or replacing electric vehicle (EV) chargers—of “infrastructure,” then the award recipient is conducting an “infrastructure project.” BABA requirements apply to the entire infrastructure project, regardless of whether or not the infrastructure was the primary basis for the award.

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Q2.2: How is “infrastructure” defined for BABA?

A2.2: The IIJA definition of “infrastructure” is interpreted broadly and encompasses all EPA-funded public infrastructure projects. The term “infrastructure” includes, at a minimum, 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 waste water systems; electrical transmission facilities and systems; utilities;

broadband infrastructure; buildings and real property; structures; facilities; and equipment that generate, transport, and distribute energy, including electric vehicle (EV) charging.⁴

When determining if a program has infrastructure expenditures, OMB advises federal agencies to interpret the term “infrastructure” broadly and consider the definition provided above as illustrative, and not exhaustive. When determining if a particular construction project of a type not listed in the definition above constitutes “infrastructure,” agencies should consider whether the project will serve a *public function* including *whether the project is publicly owned and operated, privately operated on behalf of the public,*⁵ *or is a place of public accommodation* (see Q2.15 for what is considered a “place of public accommodation”), as opposed to a project that is privately owned and not open to the public.⁶ Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer.

BABA requirements apply to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, they do not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does BABA apply to 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 integral to the infrastructure.

BABA also does not apply to technical assistance, planning, research or feasibility studies, or other non-construction services.

Date Posted: 3/19/2025, Updated:11/14/2025 (added reference to Q2.15)

Q2.3: What is a “project”?

A2.3: A “project” is any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States. Further, EPA interprets this definition of a “project” as consisting of any activity relating to the construction, alteration, maintenance, repair of infrastructure and associated activities necessary to complete the work regardless of the number of contracts or assistance agreements involved so long as all the contracts and assistance agreements awarded are closely related in purpose, time, and place (PTP test). The intentional splitting of projects into separate and smaller contracts or assistance agreements to avoid BABA’s applicability on some portions of a larger project is not allowed, particularly

⁴ 2 CFR 184 and M-24-02.

⁵ Publicly owned and operated projects and properties are generally those that are owned and operated by federal, state, Tribal, or local government. Privately owned and operated projects are generally those that are owned and operated by individuals, companies, or shareholders. Projects that are privately owned and operated can still serve a public function by, for example, being operated on behalf of the public or being a place of public accommodation. Examples of privately owned and operated infrastructure projects that serve a public function include, but are not limited to, EV chargers purchased and installed by privately owned railyards, port terminal operators, bus fleet operators, or airlines carriers at an airport. If a project triggers BABA requirements the whole project would need to comply with BABA, assuming no waiver is applied.

⁶ 2 CFR 184.4(d).

where the activities are integrally and proximately related to the whole. However, there are many situations where activities are clearly undertaken in distinct purpose, time, or place, separate contracts or assistance agreements would carry separate requirements.

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Q2.4: How is a “Purpose, Time, and Place” (PTP) Test used to determine the scope of a project?

A2.4: When questions arise regarding the extent of an infrastructure project, EPA will use a “Purpose, Time, and Place” (PTP) test to determine project BABA applicability. While each analysis will be fact specific, generally the PTP test will consider whether the activities funded are closely related in purpose, time, and place, regardless of the number of individual awards, contracts or subawards.

- a. *Purpose: Is the purpose for the funded activity segregable? For example, a public transit infrastructure grant is awarded for \$50 million. The recipient plans to fund \$10 million each in subawards to 5 different subrecipients for different projects. The purpose of the financial assistance to each subrecipient is distinct and each subaward would be considered a distinct “project” for BABA compliance.*
- b. *Time: Is the timing of the funded activity distinct? For example, in FY24, a state receives a grant to implement air monitoring in communities throughout the state and the installations are complete in the third quarter of FY 24. In FY25, the state uses its own funds to install additional air monitors in the same communities. Even though the purpose and place prongs of the PTP test are met, the timing prong is not and BABA does not apply to the expenditures of state funds for air monitors.*
- c. *Place: Is the place of the activity distinct? A local government receives a grant from an EPA program. The recipient plans to use this funding to fund EV charger infrastructure improvements in two different communities. Each project funding agreement has unique structural requirements, and each project has location-specific requirements. The place of the activity is distinct and would be considered separate “projects.”*

The PTP test considers whether the activities are integrally and proximately related to the whole but also recognizes that many activities are undertaken in segregable phases that are distinct in purpose, time, or place. All three elements must be consistent for the activity to be considered a single “project.”

Date Posted: 3/19/2025

Q2.5: Is there a test to determine whether my project is an “infrastructure” project?

A2.5: The following provides an outline of how to determine whether a project would be considered an “infrastructure” project for the OTAQ program projects. Where there are gray areas of interpretation, the recipient should contact their project officer for further guidance for their specific situation.

In considering whether a project is a BABA-applicable project, consider the following:

- 1) Is the project funded (in whole or in part) by federal (e.g., EPA) financial assistance?
 - If no, it is not subject to BABA. If yes, consider the next question.
- 2) Does the project involve the construction, alteration (including installation), maintenance, or repair of infrastructure in the U.S., regardless of whether infrastructure is the primary purpose of the federal financial assistance? (See definition of infrastructure in question 2.2 above).
 - If no, it is not subject to BABA. If yes, consider the next question.
- 3) Is the project for public use? (For example, does the project serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public or a place of public accommodation, as opposed to a project that is privately owned and not open to the public?)
 - If no, it is not subject to BABA. If yes, consider the next question.
- 4) Does the project involve leaving iron, steel, manufactured goods, or construction materials permanently affixed to the land or property, i.e. will these materials be incorporated in or consumed by the project?
 - If no, it is not subject to BABA.

If the answers to all questions are yes, then the project must be compliant with BABA (although waivers may be granted).

Date Posted: 3/19/2025

Q2.6: If I am a subrecipient, but I contract with an entity to carry out an infrastructure project, does BABA still apply?

A2.6: Yes, the BABA requirements are attached to the funding and “flow down” to subrecipients and if a subrecipient hires a contractor to carry out any part of an infrastructure project, BABA applies.

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Q2.7: Does it matter what type of federal funding is used on the grant?

A2.7: BABA applies to all federal financial assistance agreements. For example, BABA applies to EPA awards funded with, regular annual appropriated funds, Infrastructure Investment and Jobs Act (IIJA) funds, and Inflation Reduction Act (IRA) funds.

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Q2.8: Do BABA requirements apply to federal financial assistance provided to eligible private entities for a project solely for private use?

A2.8: No, eligible private entities receiving assistance for projects solely designated for private use are not “infrastructure” covered by BABA. According to the OMB Guidance M-24-02, when determining if a particular type of construction project will meet the definition of “infrastructure” under BABA, OMB recommends that “[p]rojects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project for purposes of BABA.” This would include a project adding solar panels, battery storage, or electric vehicle chargers to private residences for the exclusive benefit of the owners/residents which would not be subject to BABA.

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Q2.9: If projects are co-funded with funding mechanisms that do not require BABA, must the entire project comply with BABA?

A2.9: Yes, if the purpose time and place test is met. Any public infrastructure project that is funded in whole or in part with federal assistance must comply with the BABA requirements, unless the requirements are otherwise waived. A “project” consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all the contracts and assistance agreements awarded are closely related in purpose, time, and place. This precludes the intentional splitting of projects into separate and smaller contracts or assistance agreements to avoid BABA applicability on some portions of a larger project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreements would carry separate requirements.

Date Posted: 3/19/2025

Q2.10: If most of the project is BABA compliant, and a small portion is not, can an assistance recipient self-fund (i.e., paying with non-federal dollars) the non-compliant products?

A2.10: No. Any infrastructure project that is funded in whole or in part with federal assistance must comply with the BABA requirements, unless the requirements are otherwise waived. All iron, steel, manufactured products, and construction materials used in an infrastructure project must meet the BABA requirements unless waived. Absent a waiver, there is no “small portion” or product that does not need to satisfy the BABA requirements unless the requirements are waived (or specifically excluded (e.g., cement and cementitious materials; aggregates such as stone, sand, or gravel; aggregate binding agents or additives; or non-permanent products). An assistance recipient may request a waiver or inquire as to whether a broad waiver, such as a *de minimis* or small projects waiver, might apply. Please review the EPA [website](#) for an updated list of approved waivers.

Date Posted: 3/19/2025

Q2.11: How do international trade agreements affect the implementation of the BABA requirements?

A2.11: The BABA requirements apply in a manner consistent with United States obligations under international trade agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to these trade agreements. In general, assistance recipients are not signatories to such agreements, so these trade agreements have no impact on BABA implementation. In the few instances where such an agreement applies to a funding recipient, the recipient is responsible for determining its applicability and requirements and communicating with the funding authority (such as EPA and/or a state) on the actions taken to comply with BABA.

Date Posted: 3/19/2025

Q2.12: Do infrastructure items purchased with non-EPA funds need to meet Build America, Buy America (BABA) requirements if EPA funds are used for only part of the infrastructure project?

A2.12: Yes, BABA applies to the entire infrastructure project that receives any funding from an EPA financial assistance award even if the project also receives funding from other sources. Specifically, BABA applies to all iron, steel, manufactured products, and construction materials that are incorporated into those infrastructure projects, including items that may be purchased using non-EPA funding as part of cost-share or otherwise. **This can include activities that are not part of the workplan approved by EPA.**

It is important to consider EPA's interpretation of the term "project" when determining which activities are subject to BABA. OMB defines "project" as any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States. EPA determines whether an activity, regardless of the funding source, is part of the "project" by considering if the activity is closely related in purpose, time, and place.

An infrastructure project that does not receive any funding from EPA awards, including subawards, is not subject to EPA financial assistance requirements, including BABA. EPA cannot answer whether a project may be subject to BABA due to financial assistance from another federal agency.

For 2023 CSB Rebate Program, see revised FAQ 3.34

For 2023 CSB Grant Program, see
revised FAQ 9.b.6.

Date Posted: 8/08/2025

Q2.13: Does BABA apply to charging/fueling infrastructure that will be used by federally-funded vehicles/equipment if no federal funds are used for that charging/fueling infrastructure?

A2.13: BABA applies to charging/fueling infrastructure if:

- EPA or another agency provides \$1+ towards charging/fueling infrastructure, OR
- Recipient pays for charging/fueling infrastructure as cost share for the federal grant, OR
- Charging/fueling infrastructure is part of the same project as federal grant/rebate funding (based on purpose, time, and place (PTP) test), regardless of the funding source.

Examples of charging/fueling infrastructure being the same project:

- *Recipient states that charging/fueling infrastructure is part of the same project (e.g., in application, in the workplan, in emails to EPA, in other documents).*
- *Same PTP (illustrative examples, not exhaustive)*
 - o **Purpose** – The charging/fueling infrastructure is being installed specifically for the vehicles funded by the EPA grant/rebate and would not be installed if the recipient does not receive the EPA grant/rebate.
 - o **Time** – The charging/fueling infrastructure is being installed after being selected for the EPA grant/rebate but before the vehicles are expected to be utilized.
 - o **Place** - The charging/fueling infrastructure is located at the home operating base and in the home operating area for the vehicles funded by the EPA grant/rebate.

Examples of charging/fueling infrastructure being a separate project:

- **Purpose** – If the charging/fueling infrastructure would be installed regardless of whether the recipient procured the vehicles using the EPA grant/rebate.
- **Purpose** – Charging/fueling infrastructure will not be used for the vehicles funded by EPA grants/rebates.
- **Purpose** – Charging/fueling infrastructure does not exclusively serve the vehicle types funded by EPA grant/rebates (e.g., used for all municipal vehicles at a centralized fueling/charging station rather than just school buses, does not only serve the port, open to the public)
- **Time** – Charging/fueling infrastructure is installed significantly before receiving EPA grant/rebate (e.g., underway before selection).
- **Time** – Charging/fueling infrastructure installed significantly after receiving EPA grant (e.g., more than six months after EPA-funded vehicle delivery, unknown timing for installation when vehicle delivered)
- **Time** – Charging/fueling infrastructure installation is in a clearly different phase of a broader plan (e.g., 2025 installation plans vs 2035 installation goals).
- **Place** – Charging/fueling infrastructure is not located at or near the home operating base for the EPA-funded vehicles (e.g., where vehicles funded by EPA grants/rebates

routinely charge/fuel, overnight parking, maintenance facilities, port property, bus depot).

- **Place** – Charging/fueling infrastructure is not located in same primary operating area as the routes for vehicles funded by EPA grants/rebates (e.g., in a different town than where EPA- funded vehicles routinely travel, not at the port).

Date Posted: 8/08/2025

Q2.14: Do BABA requirements apply to federal financial assistance provided through participant support costs (PSCs)?

A.2.14: While beneficiaries of subsidies, rebates, or other forms of PSCs are not subject to 2 CFR Part 200 and the federal competitive procurement requirements, infrastructure purchased with PSCs must still meet BABA requirements as defined in IJA sections 70912(5) and (7) unless covered by an existing waiver.

Date Posted: 11/14/2025

Q2.15: How do I know if my project is “a place of public accommodation”?

A.2.15: The EPA uses the Civil Rights Act to define public accommodation, which includes an inn, hotel, motel; other establishment which provides lodging to transient guests; restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station; or motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.

Date Posted: 11/14/2025

SECTION 3: Product Coverage

Q3.1: What are the categories of products covered under BABA?

A3.1: Under BABA, unless excepted, an article, material, or supply should only be classified into one of the following categories: (1) iron or steel products; (2) manufactured products; (3) construction materials; or (4) section 70917(c) materials.

An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the above-listed categories. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. The work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

Date Posted: 3/19/2025

Q3.2: What does iron and steel mean?

A3.2: Per 2 CFR 184.3 and OMB M-24-02, a material will fall into the iron and steel category if it is wholly or “predominantly made of iron or steel or a combination of both.” “Predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.⁷

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Q3.3: What are the specific BABA requirements for iron and steel products?

A3.3: Per 2 CFR 184.3 and OMB M-24-02, “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.” Specifically, the iron and steel must be melted and poured in the United States and all subsequent manufacturing processes (such as grinding, rolling, bending, reheating, casting, and coating) must occur in the United States.

A material will fall into the iron and steel category if it is wholly or “predominantly made of iron or steel or a combination of both.” “Predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components. Refer to Appendix 1 for examples.

Date Posted: 3/19/2025

Q3.4: What is a manufactured product (with examples)?

A3.4: Per 2 CFR 183.4, Manufactured products means articles, materials, or supplies that have been processed into a specific form and shape or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. Manufactured products do not include items classified as iron or steel, a construction material, or a section 70917(c) material. However, a manufactured product may include components that are construction materials, iron or steel products, or section 70917(c) materials.

⁷ 2 CFR 184.3

The manufactured products category is anticipated to cover the majority of potential infrastructure products purchased with federal financial assistance from OTAQ programs, including complex products made up of a variety of material types and components. Common manufactured products that are subject to BABA requirements in OTAQ-funded programs include, but are not limited to, those listed in the table immediately below. Refer to Appendix 2 for additional examples.

EV chargers	Wire lugs
Stationary Generators	Fuses
Electrical junction boxes	Metal or plastic conduit and fittings
Meters	AC or DC wire
Electrical disconnects	Electrical meter bases and meters
Electrical cabinetry and housing (e.g., electrical boxes/enclosures)	EVSE distribution hardware
Solar panels	Cell Boosters
Battery energy storage systems	Network wiring
Network routers	Wire support system

Date Posted: 3/19/2025

Q3.5: What are the specific BABA requirements for manufactured products?

A3.5: All manufactured products used in the project must be 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.

Date Posted: 3/19/2025

Q3.6: What is a construction material?

A3.6: From OMB’s 2 CFR 184.3: “construction materials” include an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- fiber optic cable (including drop cable);
- optic fiber;
- lumber;
- engineered wood; or

- drywall.

Construction materials do not include items that have been classified as iron or steel or a manufactured product. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material. The term “construction material” also excludes cement and cementitious materials; aggregates such as stone, sand, or gravel; aggregate binding agents or additives. Temporary construction materials that are not permanently affixed are not subject to BABA.

Two or more construction materials that have been combined together through a manufacturing process, and items that include at least one of the above listed materials combined with a material that is not listed combined through a manufacturing process, should be considered a manufactured product. For example, a plate of glass would be a construction material under BABA, but a framed window that incorporates the glass into a frame would be a manufactured product.

Date Posted: 3/19/2025

Q3.7: What are the specific BABA requirements for construction materials?

A3.7: Per 2 CFR 184.6, each construction material has specific standards for the material to be considered “produced in the United States,” as listed in the table below.

Construction Material	“Produced in the U.S.” means all manufacturing processes occurred in the U.S.
Non-ferrous metals	From initial smelting or melting through final shaping, coating, and assembly
Plastic and polymer-based products	From initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form
Glass	From initial batching and melting of raw materials through annealing, cooling, and cutting
Fiber optic cable	From the initial ribboning (if applicable), through buffering, fiber stranding and jacketing
Optical fiber	From the initial preform fabrication stage through the completion of the draw
Lumber	From initial debarking through treatment and planing
Drywall	From initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels
Engineered wood	From the initial combination of constituent materials until the wood product is in its final form

Date Posted: 3/19/2025

Q3.8: What are “Section 70917(c) materials”?

A3.8: Section 70917(c) materials refer to cement and cementitious materials; aggregates such as stone, sand or gravel; or aggregate binding agents or additives. Section 70917(c) materials are not construction materials and are not subject to BABA requirements.

Date Posted: 3/19/2025

Q3.9: Is asphalt paving a covered product under BABA?

A3.9: No. EPA interprets Section 70917(c) of the IIJA to exclude asphalt from BABA requirements. Asphalt paving is a type of concrete composed of an aggregate material mixed with a binder (bitumen). EPA considers asphalt concrete to be excluded by section 70917(c) due to its similarities with cement and cementitious materials.

Date Posted: 3/19/2025

Q3.10: Is funding used to purchase EV chargers subject to BABA requirements?

A3.10: Yes, installation of EV chargers is an infrastructure project and must therefore comply with BABA requirements, unless a waiver is applied.

Date Posted: 3/19/2025

Q3.11: If the funds that our project is awarded are solely used for vehicles, are we required to adhere to BABA requirements?

A3.11: In most cases mobile equipment, including certain types of vehicles, must adhere to BABA requirements as well as items that are consumed in, incorporated into, or affixed to an infrastructure project funded by federal financial assistance. Consult the grant terms and conditions for additional information and EPA point of contact for further guidance.

Date Posted: 3/19/2025

Q3.12: Can EPA provide additional detail and examples on BABA applicability to various mobile equipment/vehicles/rolling stock?

A3.12: See table below

BABA Applicability for various mobile equipment/vehicles/rolling stock			
No.	Mobile equipment category	BABA Applies?	Examples (not exhaustive)
1	Equipment that: (A) Engages in construction, alteration, maintenance, or repair of enumerated (per 2 CFR 184.4(c)) or similar public infrastructure (e.g., solid waste or stormwater	Yes	• Utility vehicles for electric power, drinking water and wastewater systems • Streetsweepers and road-repair trucks

	infrastructure) categories. In the case of mobile equipment, this includes equipment for infrastructure necessary for the proper utilization and operation of the infrastructure. AND (B) Exclusively serves the infrastructure.		• Dray trucks that exclusively move cargo to and from ports and/or other intermodal facilities • Shuttle/transit vehicles for general public • Port equipment (e.g., cargo handling equipment, mobile cranes, yard trucks, locomotives, port vessels) <i>Publicly owned, publicly operated, or operated exclusively on behalf of the public:</i> • Vocational vehicles (e.g., dump trucks, bucket trucks, vacuum/sludge trucks) • Delivery vehicles (e.g., box trucks, transport refrigeration unit trucks, laundry trucks, step vans) • Waste haulers, refuse, recycling, sanitation, and septic trucks • Day cab tractors, roll-off trucks, and flatbed & stake body trucks
2	Equipment not considered <u>public transportation</u> (i.e., not open to the general public).	No	• Shuttle/transit vehicles not for general public • Vans or vehicles for transporting public employees for non-infrastructure purposes (e.g., to attend meetings, site visits)
3	Equipment that: (A) Engages in construction, alteration, maintenance, or repair of enumerated⁸ or similar⁹ public infrastructure categories. In the case of mobile equipment, this includes equipment for	No	<i>Equipment that does not exclusively serve infrastructure:</i> • Dray trucks that also move cargo between two non-infrastructure facilities (e.g., from one private distribution facility to another)

⁸ 2 CFR 184.4(c): "Infrastructure encompasses public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for 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; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging."

⁹ e.g., solid waste infrastructure, stormwater infrastructure.

	infrastructure necessary for the proper utilization and operation of the infrastructure. AND (B) Also serves other non-infrastructure purposes.		• Vocational vehicles, delivery vehicles, waste haulers, and dray cabs that are contracted part-time to support infrastructure.
4	Equipment not associated with the construction, alteration, maintenance, or repair of infrastructure.	No	• Delivery vehicles (e.g., box trucks, transport refrigeration unit trucks, laundry trucks, step vans) • Emergency response vehicles (e.g., ambulances, firetrucks) • Police vehicles • Water vessels for ambient water quality monitoring
5	Equipment brought to an infrastructure construction site and removed at or before project completion (i.e., temporary).	No	• Construction equipment (e.g., bulldozers, backhoes, forklifts, excavators, compactors, loaders, dump trucks, concrete mixers)

Date Posted: 3/19/2025

SECTION 4: Implementation (Compliance and Enforcement)

Q4.1: Who is responsible for BABA compliance?

A4.1: Responsibility for BABA implementation applies at all levels, from manufacturers to suppliers and distributors, construction contractors, assistance recipients, and funding authorities.

Manufacturers have a responsibility to provide adequate and accurate documentation of the products manufactured. If suppliers and distributors are involved, they are responsible for passing along compliance documentation for products supplied to projects that are subject to the BABA requirements.

It is the assistance recipient's responsibility to ensure compliance with the BABA requirements. The assistance recipient and their representatives are primarily responsible for ensuring the documentation collected for products used on the project is sufficient to document compliance

with the BABA requirements. This includes maintaining documentation showing the appropriate compliance and use of any waivers. Assistance recipients are strongly advised to conduct site visits of projects during construction and review documentation demonstrating the assistance recipient's proof of compliance. Observed best practices typically include a meeting early in the process (sometimes before bid and usually prior to commencing construction) and at least one project site visit during the construction process.

The funding authority is responsible for providing oversight and guidance as needed to ensure the proper implementation of the requirements. The Uniform Grants Guidance (UGG) (Title 2 of the Code of Federal Regulations (CFR) Part 200) applies to many federal financial assistance agreements that will include BABA requirements. The general provisions of 2 CFR Part 200 determine the responsible party for the grant funding authority. Failure to comply, including maintaining documentation of compliance, may result in termination and repayment of grants or other types of financial assistance.

At all levels, where fraud, waste, abuse, or any violation of the law is suspected, the EPA Office of Inspector General (OIG) should be contacted immediately. The EPA OIG can be reached at 1-888-546-8740 or OIG_Hotline@epa.gov. More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

Date Posted: 3/19/2025

Q4.2: When will the BABA requirements be assessed for compliance? Do assistance recipients need to have waivers for potential non-domestic products before assistance agreements are in place, at the time products are procured or products are incorporated into the project (i.e., used)?

A4.2: Compliance is assessed when the domestic product is used (or installed) at the project site. Proper compliance documentation, such as a BABA certification letter issued by a manufacturer, or a waiver, should accompany a product prior to its "use," in accordance with Section 70914(a) of IIJA. The collection of these compliance records may occur prior to assistance agreements being in place but is not necessary. Additionally, communication of BABA requirements through appropriate Terms and Conditions in financial assistance agreements and in project solicitation and contract documents is key in ensuring all parties involved are informed of the requirements for the project before construction is underway.

Date Posted: 3/19/2025

Q4.3: Will EPA provide documentation for BABA for bid solicitation and suggested contract language? Will EPA provide suggested language for Assistance Agreements?

A4.3: See Appendix 3, which includes suggested language for construction contracts which addresses the BABA requirements. In addition to the language suggested in Appendix 3, EPA also recommends that assistance recipients prepare contract bid solicitation documents with a statement for the consulting engineers and construction firms as follows: "By signing the payment application and recommending payment, Contractor certifies they have reviewed documentation for all products and materials submitted for payment, and the certifications are

sufficient to demonstrate compliance with Build America, Buy America Act (BABA) requirements.” In most cases, the assistance recipient’s representatives assume the responsibility for their clients to conduct due diligence on compliance with applicable domestic preference requirements.

Date Posted: 3/19/2025

Q4.4: How can product compliance with the BABA requirements be demonstrated?

A4.4: Assistance recipients and their representatives should ensure that the products delivered to the construction site are accompanied by proper documentation that demonstrate compliance with the law and be made available to the funding authority upon request. The documentation may be received and maintained in hard copy, electronically, or could be embedded in construction management software. The use of a signed certification letter from a manufacturer for the project is the most direct and effective form of compliance documentation for ensuring products used on site are BABA-compliant prior to their installation (see Appendix 4 for an example manufacturer’s certification letter); however, other forms of documentation are also acceptable as long as collectively, the following can be demonstrated:

1. Documentation is linked to the specific project. For example, this can be in the form of the project name, project location, contract number, or project number.
2. Documentation is linked to the product used on the project. For example, description of product(s) (simple explanation sufficient to identify the product(s)), or an attached (or electronic link to) purchase order, invoice, or bill of lading.
3. Documentation that includes a statement attesting that the products supplied to the assistance recipient are compliant with BABA requirement. Reference to the Infrastructure Investment and Jobs Act (“IIJA”) or the Bipartisan Infrastructure Law (BIL) are also acceptable.
4. Documentation that manufacturing occurred in the United States, which could include, for example, the location(s) of manufacturing for each manufacturing step that is being certified. It is acceptable for manufactured products to note a single point of manufacturing, documenting that the final point of manufacturing is in the United States. (Note: each BABA category may require different determinations for compliance.)
5. Signature of company representative (on company letterhead and signature can be electronic). The signatory of the certifying statement affirms their knowledge of the manufacturing processes for the referenced product(s) and attests that the product meets the BABA requirements.

(Note: A country-of-origin stamp alone is not sufficient verification of compliance with BABA and assistance recipients should not rely on it to ensure compliance.)

In addition to compliance documentation, assistance recipients or their representatives should also conduct a visual inspection of the product when it arrives to the project site, especially for iron and steel products which are often stamped with the country of origin.

EPA may develop alternative procedures for demonstrating compliance. Additional project- or program-specific instructions may be developed on a case-by-case basis in order to meet individual circumstances.

Date Posted: 3/19/2025

Q4.5: Will EPA provide a form or template for tracking and documenting compliance?

A4.5: EPA does not require a specified format for tracking and documenting compliance. Assistance recipients are free to develop any system (e.g., from simple to complex software) for tracking items used on the project and the accompanying compliance documentation (e.g., certification letters, applicable waivers) if it helps with implementation and compliance. Elements that may help with keeping track of compliance may include product description, quantity required/used, product category (i.e., iron and steel, manufactured product, or construction material), status of obtaining certification letter, product cost, and whether the item might qualify as de minimis, or qualify under another applicable waiver.

Date Posted: 3/19/2025

Q4.6: If a manufacturer claims to comply with the Buy American Act, does it also comply with BABA?

A4.6: Other domestic preference requirements, such as Buy American Act, often differ from BABA requirements. Any products that are to be certified as compliant with BABA should include a specific reference to the BABA requirements in 2 CFR 184 and appropriate attestation from a responsible manufacturing company official.

Date Posted: 3/19/2025

Q4.7: Who is responsible for documenting the 55 percent content requirement for manufactured products under BABA? What if the final manufacturer cannot trace or verify domestic origin for all components?

A4.7: The manufacturer who signs a certification letter is responsible for documenting compliance with any of the three categories of products (iron and steel, manufactured products, or construction materials). For manufactured products, BABA requires that greater than 55 percent of the total cost of all components of the manufactured product be from domestic sources. EPA recommends that the certification letter for manufactured products (Appendix 4) documents whether the item passes the content test in the final product along with a statement attesting to compliance with the BABA requirements for manufactured products.

Date Posted: 3/19/2025

Q4.8: How do final product fabricators document compliance when the final step of manufacturing may be simply assembling components?

A4.8: It is acceptable, in many cases, especially for highly complex manufactured products that utilize many sub-components, for the final point of assembly to certify without using a “step certification” process. Multiple certifications (i.e., step certifications) or a singular certification can be used for a manufactured product, as long as the certifying official is willing to attest to the product’s compliance with BABA requirements at all stages of manufacturing.

Date Posted: 3/19/2025

Q4.9: Will Material Test Reports be acceptable in lieu of a BABA certification for iron and steel?

A4.9: Yes. Material Test Reports (MTRs, commonly referred to as “Mill Certifications” or “Mill Certs”) provide the chemical composition of steel and iron from a mill or foundry. If an MTR accompanies the delivery of steel or iron to a project site with an invoice or bill of lading, EPA will consider it sufficient to demonstrate compliance (equivalent to a certification letter) as long as the MTR includes a manufacturer representative’s signature in addition to the location (city and state) of the mill/foundry. It is common for MTRs to be the first letter in a “step certification” if the product is further fabricated or painted, etc., by another manufacturer.

Date Posted: 3/19/2025

Q4.10: Can a manufacturer use a fillable certification letter for products?

A4.10: EPA recommends that certifications be signed by representatives of the manufacturing entity as shown in Appendix 4. EPA does not oppose manufacturers using forms to internally develop letters within their company, thereby providing signed, non-manipulable certification letters to suppliers, distributors, and/or assistance recipients. A fillable form that can be changed by someone outside of the manufacturer after signature does not demonstrate compliance and may create compliance concerns for the manufacturer or assistance recipient.

Date Posted: 3/19/2025

Q4.11: Are product certifications from suppliers and distributors allowed?

A4.11: EPA recommends that representatives of product manufacturers certify compliance and discourages suppliers and distributors from creating certification letters. EPA does not rule out the possibility that a third-party certification process, such as a certification by a distributor, may be viable. However, EPA is currently not aware of a system or proposed system that meets the EPA’s recommendations for documentation of product certification.

Date Posted: 3/19/2025

Q4.12: How long should assistance recipients keep compliance documentation?

A4.12: Assistance recipients should apply recordkeeping requirements for the project according to the procedures dictated by the funding authority. For most EPA grant programs, this is prescribed in the Uniform Grants Guidance at 2 CFR 200.334-200.338. At a minimum, these

records must be retained for a period of three years after closeout (submission of the final financial report) per 2 CFR 200.334.

Date Posted: 3/19/2025

Q4.13: How will assistance recipients manage certification letters for every product used in an infrastructure project?

A4.13: EPA recognizes that the new BABA requirements will cover most products used in typical infrastructure projects, and that the number of items that may require certification at large and/or complex projects may reach several hundred. EPA recommends that projects with a high number of potentially covered products meet with their funding authority about potential compliance strategies to minimize burden and streamline compliance activity. Assistance recipients should prepare contract bid solicitation documents with a statement for the consulting engineers and construction firms as follows: “By signing payment application and recommending payment, Contractor certifies they have reviewed documentation for all products and materials submitted for payment, and the documentation is sufficient to demonstrate compliance with Build America, Buy America Act requirements.” In most cases, the assistance recipient’s representatives may assume the responsibility for their clients to conduct due diligence on compliance with applicable domestic preference requirements.

Date Posted: 3/19/2025

Q4.14: What happens if I don’t comply with BABA requirements?

A4.14: If recipients fail to comply with applicable BABA requirements on their project, it can, depending on the circumstances, result in the need for removing and replacing completed work at the recipient’s cost, disallowance of costs and recovery of EPA funds, termination of the grant and potentially even debarment from performing federally funded work. Refer to 2 CFR 200.339. In addition, knowingly failing to comply with BABA requirements can lead to liability under the False Claims Act, leading to severe penalties such as damages or prison.

Date Posted: 3/19/2025

SECTION 5: Waivers

Q5.1: Are Federal agencies able to waive BABA requirements?

A5.1: The EPA is committed to implementing BABA. OMB’s guidance in M-24-02 which clarifies that Federal awarding agencies can waive BABA requirements if: 1) applying the Buy America Preference would be inconsistent with public interest (a “public interest waiver”); 2) types of 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 (a “nonavailability waiver”); or 3) the inclusion of iron, steel, manufactured products, or

construction materials produced in the United States will increase the cost of the overall infrastructure project by more than 25 percent (an “unreasonable cost waiver”).

Date Posted: 3/19/2025

Q5.2: Can I apply for a waiver?

A5.2: Yes, project-specific waivers may be issued on a case-by-case basis. Project-specific waivers are for the use of a specified non-domestic product for a single project. An assistance recipient may discuss the need for project-specific waivers with their EPA project officer or by e-mailing BABA-OTAQ@epa.gov for assistance. Refer to Appendices 5 and 6 for additional details of the waiver request process and where to find EPA’s currently active BABA waivers.

Date Posted: 3/19/2025

Q5.3: When would a Small Project Waiver apply to a Federally funded EV infrastructure project?

A5.3: Small project waivers can be applied when the total assistance agreements or subaward or participant support cost is less than \$250,000. For example, a school district received an award for \$195,000 for one school bus and supporting infrastructure. A Small Project Waiver would satisfy BABA compliance requirements for items such as panel boxes and conduit needed to connect the EV charger to the meter.

Date Posted: 3/19/2025

Q5.4: The EV Charger Waiver that was issued on July 21, 2023 expired on July 1, 2024. Can BABA compliance for EV chargers be met through a different waiver listed above such as the De Minimis Waiver?

A5.4: EPA’s 2023 EV Charger Waiver has expired, and new projects cannot utilize this waiver. However, projects that purchased EV chargers that were assembled in the U.S., manufactured on or before June 30, 2024, and installed by October 1, 2024, can still utilize the EPA’s 2023 EV Charger Waiver.

Other active waivers could apply to the infrastructure project, such as project-specific waivers, the De Minimis Waiver or the Small Project Waiver, assuming all requirements of those waivers are met.

Date Posted: 3/19/2025

Q5.5: When would EPA’s De Minimis Waiver apply to a project supported by Federal financial assistance?

A5.5: Infrastructure projects involve the use of potentially thousands of miscellaneous, often low-cost products that are essential for construction and are incorporated into the project. For many of these miscellaneous products, the country of manufacture, domestic content percentage, and the availability of alternatives may not always be readily or reasonably identifiable prior to procurement in the normal course of business. For other miscellaneous

products, the country of manufacture may be known but may be appropriately characterized as potentially de minimis items. Ensuring these products are produced domestically and that all other BABA requirements are met for these items can create significant administrative burden for the recipients; add additional overhead costs to projects; and delay procurement and project implementation. To minimize the administrative burden on assistance recipients where the costs of compliance could distract from the focus on high value compliant items, assistance recipients may use EPA's De Minimis Waiver for their projects. Specifically, EPA's De Minimis Waiver can be applied to small, de minimis value products cumulatively representing up to 5% of the total project cost.

Date Posted: 3/19/2025

Q5.6: Where can I find more information about the EPA's Clean Ports Program waiver?

A5.6: Information regarding the targeted, time-limited Public Interest General Applicability Waiver of BABA for certain zero emissions mobile port equipment purchased under the Clean Ports Program can be found in Appendix 6 and at https://www.epa.gov/system/files/documents/2024-05/baba_clean-ports-program-waiver.pdf.

A Questions & Answers document regarding this waiver is available at <https://www.epa.gov/system/files/documents/2024-07/clean-ports-baba-faq-2024-07.pdf>.

Date Posted: 3/19/2025

Q5.7: Can an assistance recipient request a waiver based on a specification written for a specific brand or model of product (that is, a specification that names a branded item or model)?

A5.7: In most cases, performance-based specifications are expected and required for the majority of infrastructure projects funded by EPA's financial assistance programs. In rare cases where "branded" or product-specific sourcing may be included in project specifications, it is suggested that the specifications include the item in question (that is, not simply a catalog page, but also materials of construction, sizing, quantities, and applicable engineering performance design characteristics for the project, etc.) in addition to the standard phrase "or equal." For the purposes of product alternative market research, EPA will evaluate the BABA requirements based on performance-based engineering specifications for the product(s) in question. If the project's specifications do not include performance-based specifications, or at least an "or equal" designation, EPA will base its research on an "or equal" designation using best professional judgment to the extent practicable.

Date Posted: 3/19/2025

UPDATED *Q5.8: What should I do if I'm covered by a program-wide or agency-wide (i.e., general applicability) waiver? Do I need to maintain documentation?*

A5.8: If you believe your award or project is covered by a program-wide or agency-wide waiver, please contact your EPA project officer and provide your rationale. The project officer will

respond with either an affirmative or negative response. Both the EPA point of contact and the recipient will retain that communication with their records.

It is the responsibility of the assistance recipient to ensure that the information provided to the EPA is true and accurate. Copies of any waivers applied and the records warranting the use of the waiver must be kept by the recipient in their project file.

For example, a recipient may seek to apply the EPA's Small Projects Waiver. The recipient or subrecipient would send an email to the EPA point of contact citing the award amount as their rationale. The official would respond that they agree the Small Projects Waiver applies to this award. The recipient (and/or subrecipient) and the EPA point of contact would retain this communication within their grant files.

(Note: subrecipients should include the primary recipient in all communications to the EPA about the applicability of approved waivers for their EPA-funded project.)

Date Posted: 3/19/2025, Updated: 1/21/2026 (to clarify that OTAQ program subrecipients can contact the EPA directly as long as primary recipients are included in the communications)

Q5.9: If a product is not readily available domestically, will EPA provide short-term product waivers?

A5.9: EPA will address the nonavailability of specific domestic products through the waiver process (Appendix 5), if appropriate. To the extent practicable and with the intent to maximize domestic market and supply chain development, EPA intends to address issues of broad product unavailability with targeted, time-limited, and conditional general applicability waivers, as prescribed in OMB Guidance M-24-02. EPA will follow its robust and thorough product market research processes as noted in the Made in America's Market Research Resources section, <https://work.epa.gov/made-america/market-research-resources>, to identify and verify domestic nonavailability for those products for which waivers may be appropriate.

Date Posted: 3/19/2025

Q5.10: What if compliance with BABA will increase the costs of my project, can I seek a waiver? What information is needed to justify a waiver based on costs?

A5.10: If the cost of compliance with BABA will increase the *overall project cost* by more than 25 percent, a recipient may seek a project specific "unreasonable cost" waiver. As part of the waiver request, the assistance recipient must demonstrate that implementation of the BABA requirements will increase the *overall project cost* by more than 25 percent. Depending on the circumstances of the cost increases, documentation to justify the cost waiver can vary but may include itemized cost estimates or bid tabulations comparing project costs with and without BABA implementation. Assistance recipients should begin assessing the potential cost impacts of the BABA requirements during the design phase of a project.

Date Posted: 3/19/2025

Q5.11: Can administrative costs associated with tracking and verification of certifications be considered when determining if the cost of a project increases by 25 percent or more?

A5.11: Yes. Section 70914(b)(3) of the IIJA states that a waiver may be provided if the overall cost of the project increases by more than 25 percent due to the “inclusion of iron, steel, manufactured products, or construction materials produced in the United States.” EPA interprets this to mean that the “inclusion” of the BABA-covered products could encompass reasonable administrative costs associated with complying with the BABA requirements, such as staff, contractor, and technological resources to collect and track BABA compliance.

Date Posted: 3/19/2025

Q5.12: Where can I obtain additional information about project-specific waivers?

A5.12: All 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, or nonproprietary communications with potential suppliers.

Please refer to Appendix 5 for additional details of the waiver request process.

For additional waiver information, please refer to OMB’s Memorandum M-24-02, which identifies a minimum set of information needed for a proposed waiver to be considered and ultimately submitted to its Made in America Office for concurrence.

Date Posted: 3/19/2025, Updated: 11/14/2025 (added reference to Appendix 5)

Q5.13: When a project receives funding from multiple assistance programs (within EPA or from separate agencies), which agency provides oversight for BABA implementation?

A5.13: OMB Guidance M-24-02 says: “the Federal agency contributing the greatest amount of Federal funds for the project should be considered the Cognizant Agency for Made in America (“Cognizant Agency”) and may take responsibility for coordinating with the other Federal awarding agencies.” Section VII, p.8 (emphasis added). Although the M-24-02 guidance only addresses BABA waivers received for projects with funding from separate federal agencies, EPA will apply the Cognizant Agency concept to other BABA implementation activities for a project if it helps minimize duplicative efforts among agencies and reduce the burden on recipients. In those cases, the Cognizant Agency will be responsible for oversight activities, such as providing BABA general provisions for contracts, oversight of certification of products, and inspection and field oversight of projects. Where situations arise that adhering to the Cognizant Agency concept would reasonably increase the potential for burden or significantly delay a project, agencies may coordinate with another agency to perform the oversight activities.

Date Posted: 3/19/2025

Q5.14: When does Cognizant Agency apply to waivers?

A5.14: The Cognizant Agency concept applies to waiver requests submitted for co-funded projects, funded by separate federal agencies and applicable only to recipient-submitted waiver requests. OMB Guidance M-24-02 addresses this question only with respect to receiving and processing multiple waiver requests from projects co-funded across different Federal agencies in order to avoid duplicative efforts (i.e., the Cognizant Agency concept in Section VII, pg. 8 of OMB Guidance M-24-02).

Date Posted: 3/19/2025

NEW Q5.15: *What costs can be included in “total project cost” when utilizing the EPA’s De Minimis Waiver for mobile equipment and fueling infrastructure projects?*

A5.15: The EPA’s De Minimis Waiver (available at: <https://www.epa.gov/baba/build-america-buy-america-baba-approved-waivers>) allows recipients to waive BABA requirements for products used in and incorporated into a project, provided that these products cumulatively comprise no more than 5% of the total project cost.

The five percent de minimis calculation is based on the total project costs for the infrastructure project (see FAQ Q2.3 and Q2.4 for more information on the definition of “project” and using the “Purpose, Time, and Place” test to determine project scope). Total project cost includes all costs within the scope of the infrastructure project, including items that are not subject to BABA.

For example, a project to deploy electric school buses and their charging infrastructure would include costs that are subject to BABA (e.g. charging equipment and related materials) as well as costs that are not subject to BABA (e.g., school buses, labor to install the charging equipment, and administrative costs such as permit fees).

Note that, in some cases, the total project cost can also include non-EPA funding sources. Please see Q&A 2.12 for more information.

Funding recipients must retain appropriate documentation to demonstrate compliance with the requirements in the EPA’s De Minimis Waiver, including a list and receipts of all items for which they are applying the waiver in their project files, along with a record of total project costs. The documentation must include the unit cost and cumulative cost of all waived items to ensure that it does not exceed 5% of total project costs.

Date Posted: 1/21/2026

APPENDIX 1: Items Primarily Made of and Classified as Iron and Steel

Lined and Unlined Pipe	Lined and Unlined Fittings	Tanks
Flanges	Pipe Clamps and Restraints	Structural Steel
Valves	Hydrants	Pre-Cast, Iron/Steel Reinforced Concrete (of all types, regardless of iron/steel content percentage)
Manhole Covers and other Municipal Castings	Access Hatches	Ballast Screens
Iron or Steel Benches	Bollards	Cast Bases
Cast Iron Hinged Hatches	Cast Iron Riser Rings	Catch Basin Inlets
Cleanout/Monument Boxes	Construction Covers and Frames	Curb and Corner Guards
Curb Boxes	Curb Openings	Curb Stops
Detectable Warning Plates	Downspout Shoes	Drainage Grates
Drainage Grate Frames and Curb Inlets	Inlets	Junction Boxes
Lampposts	Manhole Rings and Frames	Manhole Risers
Meter Boxes	Service Boxes	Steel Hinged Hatches
Steel Riser Rings	Trash Receptacles	Tree Grates
Tree Guards	Trench Grates	Valve Boxes
Valve Box Covers and Risers	Access Ramps	Aeration Pipes and Fittings (separate from aeration/blowers)
Angles	Backflow Preventers /Double Check Valves	Baffle Curtains
Iron or Steel Bar	Bathroom Stalls	Beam Clamps
Cable Hanging Systems	Clarifier Tanks	Coiled Steel
Column Piping	Concrete Reinforcing Bar, Wire, and Fibers	Condensate Sediment Traps
Corrugated Pipe	Couplings	Decking
Digestor Covers	Dome Structures	Door Hardware
Doors	Ductwork	Expansion Joints
Expansion Tanks (diaphragm, surge, and hydropneumatics)	Fasteners	Fencing and Fence Tubing
Fire Escapes	Flanged Pipe	Flap Gates
Framing	Gate Valves	Generic Hanging Brackets
Grating	Ground Testing Boxes	Ground Test Wells

Guardrails	HVAC Registers, Diffusers, and Grilles	Joists
Knife Gates	Ladders	Lifting Hooks, J-bar, Connectors within, and Anchors for Concrete
Lockers	Man Baskets and Material Platforms	Manhole Steps
Mud Valves	Municipal Casting Junctions	Non-mechanical (aka stationary) Louvers and Dampers
Overhead Rolling Doors/ Uplifting Doors (manual open, no motor)	Pipe Connectors	Pipe Hangers
Pipe Pilings (any type of steel piling)	Pipe Spool (pipe, flanges, connectors, etc.)	Pipe Supports
Pitless Adaptors	Pre-fab Steel Buildings /Sheds (simple structure, unfurnished)	Pre-stressed Concrete Cylinder Pipe (PCCP)
Railings	Reduced Pressure Zone (RPZ) Valves	Roofing
Service Saddles	Sheet Piling	Sinks (not part of eyewash systems)
Solenoid Valves	Stairs	Static Mixers
Stationary Screens	Surface Drains	Tapping Sleeves
Telescoping Valves	Tipping Buckets	Trusses
Tubing	Valve Stem Extensions	Valve Stems (excluding handwheels and actuators)
Wall Panels	Wall Sleeves/Floor Sleeves	Welding Rods
Well Casing	Well Screens	Wire
Wire Cloth	Wire Rod	Wire Rope and Cables

Date Posted: 3/19/2025

APPENDIX 2: Items Primarily Made of Iron and Steel and Classified as Manufactured Products

Actuator Superstructures/ Support Structures	Aeration Nozzles and Injectors	Aerators
Analytical Instrumentation	Analyzers (e.g., ozone, oxygen)	Automated Water Fill Stations
Blowers/Aeration Equipment	Boilers, Boiler Systems	Chemical Feed Systems (e.g., polymer, coagulant, treatment chemicals)
Chemical Injection Quills	Chemical Injectors	Clarifier Mechanisms /Arms
Compressors	Controls and Switches	Conveyors
Cranes	Desiccant Air Dryer Tanks	Dewatering Equipment
Dewatering Roll-offs	Disinfection Systems	Drives (e.g., variable frequency drives)
Electric/Pneumatic/Manual Accessories Used to Operate Valves (such as electric valve actuators)	Electrical Cabinetry and Housings (such as electrical boxes /enclosures)	Electrical Conduit
Electrical Junction Boxes	Electronic Door Locks	Elevator Systems (hydraulic, etc.,)
Emergency Life Systems (including eyewash stations, emergency safety showers, fire extinguishers, fire suppression systems including sprinklers /piping/valves, first aid, etc.)	Exhaust Fans	Fall Protection Anchor Points
Fiberglass Tank w/Appurtenances	Filters (and appurtenances, including underdrains, backwash systems)	Flocculators
Fluidized Bed Incinerators	Galvanized Anodes/ Cathodic Protection	Gear Reducers
Generators	Geothermal Systems	Grinders
Heat Exchangers	HVAC (excluding ductwork)	HVAC Dampers (if appurtenances to aerators/blowers)
HVAC Louvers (mechanical)	Intake and Exhaust Grates (if appurtenances to aerators/blowers)	Instrumentation
Laboratory Equipment	Ladder Fall Prevention Systems	Ladder Safety Posts
Lighting Fixtures	Lightning and Grounding Rods	Mechanical or Actuated Louvers/Dampers
Membrane Bioreactor Systems	Membrane Filtration Systems	Metal Office Furniture (fixed)
Meters (including flow, wholesale, water, and service connection)	Motorized Doors (unit)	Motorized Mixers
Motorized Screens (such as traveling screens)	Motors	Pelton Wheels
Pipeline Flash Reactors (similar to injectors)	Plate Settlers	Precast Concrete without Iron/Steel Reinforcement
Furnished Pre-fab Buildings (such as furnished with pumps, mechanics inside)	Presses (including belt presses)	Pressure Gauges

Pump Cans/Barrels and Strainers	Pumps	Mechanical Rakes
Safety Climb Cable	Sampling Stations (unless also act as hydrant)	Scrubbers
Sensors	Sequencing Batch Reactors (SBR)	Steel Shelving (fixed)
Slide and Sluice Gates	Spray Header Units	Steel Cabinets (fixed interior/furniture)
Supervisory Control and Data Acquisition (SCADA) Systems	Tracer Wire	Valve Manual Gears, Actuators, Handles
Voltage Transformer	Water Electrostatic Precipitators (WESP)	Water Heaters
Weir Gates		

Date Posted: 3/19/2025

APPENDIX 3: Example Construction Contract Language for BABA

ALL CONSTRUCTION CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE BABA REQUIREMENTS. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN A PROJECT'S CONSTRUCTION CONTRACT. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the _____ ("Owner") and the _____ (the "Funding Authority") that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as "Build America, Buy America;" that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States ("Build America, Buy America Requirements") including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and Funding Authority (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner or the Funding Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with the Funding Authority, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the Funding Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Funding Authority.

Date Posted: 3/19/2025

APPENDIX 4: Example Certification Letter



Minas Morgul Steel, Inc.
1245 Barad Dur Ave.
Mordor, Middle Earth
+1 555 867 5309

Material Certification

September 15, 2024

Gondor Supply Co.
3477 One Ring Ln.
Fort Tirith, IA 50501

RE: Job Name: Saruman Contracting
Project #: Hobbiton Depot, The Shire, WY
Order Type: Submittal
Quantity:
4

Item Description:
8550350 – DC fast charger – 120kW

Dear Valued Partner:

We hereby certify that the above listed products supplied to the subject project are in full compliance with 2 CFR 184, Build America, Buy America infrastructure project requirements as a manufactured product. The charger and all of its components are manufactured in the United States of America at our facilities in Moria, OK and Isengard, MI.

Meriadoc Brandybun

Product Quality Manager
Minas Morgul Steel, Inc.

Key Elements:

1. Project Reference
2. Specific list of products
3. Location of manufacturing (city and state)
4. Domestic Preference requirement reference (+ BABA category reference)
5. Signature or representative

Date Posted: 3/19/2025

APPENDIX 5: Waiver Request Process

The framework described below establishes the process for an assistance recipient to request waivers of the BABA requirements directly from the EPA for OTAQ's funding programs described in this document. Pursuant to BABA, the EPA has the responsibility to make findings as to the issuance of waivers to the BABA requirements.

Step-by-Step Waiver Process:

The waiver process begins with the assistance recipient or their authorized representatives. Subrecipients are permitted to request waivers; however, they must ensure that the primary recipient is included in all communications throughout the waiver process. To fulfill the BABA requirements, the assistance recipient or their authorized representatives must in good faith design the project (where applicable) and solicit bids for construction with American-made iron and steel, manufactured goods, and construction materials. It is essential that the assistance recipient include the BABA terms (*e.g.*, see Appendix 3: Example Construction Contract Language for BABA) in any terms for subawards, request for proposals, or solicitations for bids, and in all contracts. If a project cannot comply with the BABA requirements, recipients should seek a waiver from the EPA before drawing down funds for any non-compliant product. The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three statutory conditions is sufficiently demonstrated to the EPA and approved.

To apply for a project-specific waiver:

The assistance recipient (primary recipient or subrecipient) prepares the waiver package. The EPA does not accept waiver requests from suppliers, distributors, or manufacturers.

Requests to waive the requirements should include the following information, as applicable:

- Waiver justification type (Public Interest, Non-Availability, or Unreasonable Cost):
 - Applying the Buy America preference would be inconsistent with the public interest (**a “public interest waiver”**);
 - Types of 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 (**a “nonavailability waiver”**); or
 - The 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 (**an “unreasonable cost waiver”**).
- Recipient name and Unique Entity Identifier (UEI).
- Federal financial assistance program name.

- Award information: Grant Number (*a.k.a.*, Federal Award Identification Number) or Rebate ID.
- Infrastructure project description and location.
- Total estimated infrastructure project cost, including all funding sources not just the federal contribution or recipient's cost share.
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each.
- A detailed justification as to how the non-domestic item(s) is/are essential to the project, including:
 - A justification statement—based on one of the applicable justification types outlined above—as to why the listed items cannot be procured domestically, including a description of the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient in an attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
 - A certification that the recipient made a good faith effort to solicit bids for products produced in the U.S. supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
 - A description of the market research should include who conducted the market research, when it was conducted, sources that were used, and the methods used to conduct the research;
 - Anticipated impact to the project if no waiver is issued.

Upon completion, send to BABA-OTAQ@epa.gov (with a cc to their project officer) and evaluation by the EPA will commence. Note that subrecipients should include the primary recipient in all communications throughout the waiver process.

(Note: More information may be provided in the future regarding what information should be included in waiver requests).

Evaluation by the EPA:

After receiving an application for a waiver of the BABA requirements and ensuring sufficient information was provided, the EPA will initiate the four-step process shown below:

1. **Research** – The EPA will conduct its own market research consistent with BABA, 2 CFR part 184, OMB Guidance M-24-02, and any other applicable Buy America laws.
2. **Posting** – After research, and before a waiver can be issued, the EPA will make publicly available on the agency’s website a detailed written explanation for the proposed determination to issue the waiver and provide at least 15 days for public comment on the proposed waiver. During that period, the public will have the opportunity to review the request and provide informal comments to the EPA. The website can be found at: [Build America, Buy America \(BABA\) Waivers Open for Public Comment](#)
3. **Evaluation** – After receiving a request for a waiver of the BABA requirements, the EPA will determine, in consultation with OMB’s Made in America Office, whether the request properly and adequately documents and justifies the statutory basis cited for the waiver.
4. **Signature of waiver approval by the Administrator or another agency official with delegated authority** – As soon as the waiver is signed and dated, the EPA will notify the assistance recipient and post the signed waiver on the Agency’s [approved BABA waivers website](#). The assistance recipient should keep a copy of the signed waiver in its project files. If a waiver request is denied, the assistance recipient will receive notification.

(Note: Additional steps may be required in the future regarding the waiver process depending on additional guidance from OMB.)

Date Posted: 3/19/2025, Updated: 11/14/2025 (Amended to provide more detail)

APPENDIX 6: Key EPA BABA Waivers

This list is current as of the date of these procedures. Note that approved waivers can be amended or rescinded at any time. Please check the [EPA BABA website](#) for the latest information regarding approved waivers.

- ***Small Project Waiver***
 - Waives all BABA requirements for federal financial assistance awards, subawards, or participant support costs less than \$250,000.
 - Applicability dates: September 26, 2022 to September 26, 2027
 - <https://www.epa.gov/system/files/documents/2022-09/Small%20Proj%20Gen%20App%20Waiver%20BABA%20EPA.pdf>
- ***De Minimis Waiver***
 - Recipients can use the De Minimis waiver for any infrastructure project for non-domestically produced items representing up to 5% of the total project cost.
 - Applicability dates: October 21, 2022 to October 21, 2027
 - <https://www.epa.gov/system/files/documents/2022-10/EPA%20BABA%20De%20Minimis%20Waiver%20Final%20Oct%202022.pdf>
- ***Minor (Ferrous) Components for Iron and Steel Products Waiver***
 - For iron and steel products, up to five percent of the total material cost of a product can include non-domestically produced miscellaneous minor iron or steel components without further need for a product-specific waiver.
 - Applicability dates: April 11, 2023 to April 11, 2028
 - <https://www.epa.gov/system/files/documents/2023-04/BABA%20Minor%20Components%20Waiver.pdf>
- ***Pacific Island Territories Multi-Agency Waiver***
 - Recipients, subrecipients, and program participants in the Pacific Island territories of Guam, American Samoa, and Northern Mariana Islands can use this waiver.
 - Waives all BABA requirements except for certain telecommunications infrastructure, energy generation and stationary storage larger than five megawatts, and cargo handling equipment.
 - Applicability dates: January 8, 2025 to January 7, 2030
 - <https://www.epa.gov/system/files/documents/2025-01/multi-agency-pacific-island-territory-public-interest-waiver-final.pdf>
- ***Indian Tribes Multi-Agency Waiver***
 - For Indian Tribes, as defined in 25 U.S.C. § 5304(e), including their governmental arms and instrumentalities, Tribal organizations, Tribal entities, and Native Hawaiian organizations as determined by each program's regulatory and statutory authority.
 - Waives all BABA requirements for awards and subawards (not participant support costs) equal to or less than \$2.5 million. For awards and subawards greater than \$2.5 million, waives BABA requirements for manufactured products until September 30, 2026.
 - Applicability dates: January 10, 2025 to January 9, 2030

- o <https://www.epa.gov/system/files/documents/2025-01/multi-agency-tribal-public-interest-waiver-final.pdf>
- ***Domestically Assembled Solar Modules Waiver***
 - o For recipients, subrecipients, or program participants that purchase solar modules.
 - o Waives domestic content requirements for domestically assembled solar modules
 - o Applicability dates: January 10, 2025 to December 31, 2025, if panels are installed by June 30, 2026.
 - o <https://www.epa.gov/system/files/documents/2025-01/epa-solar-waiver-oar.pdf>
- ***Clean Ports Program Waiver***
 - o For recipients, subrecipients, or program participants of the Clean Ports Program.
 - o Waives domestic content requirements for certain types of zero emissions mobile port equipment that is manufactured in the United States.
 - o Also provides a supplemental de minimis waiver for non-domestically produced items representing up to 15% of material costs associated with the purchase of mobile port equipment, except for the purchase of cranes.
 - o Applicability dates: May 15, 2024 to July 1, 2029 if 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.
https://www.epa.gov/system/files/documents/2026-06/ports-baba-waiver-tech-amendment-memo-and-waiver_7-17-2024_0.pdf

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