

Build America, Buy America (BABA) Act Requirements: Additional Information for Waiver Requests and Determinations

A Resource for State Revolving Fund Programs and Assistance Recipients

The purpose of this document is to assist State Revolving Fund programs and assistance recipients with understanding the Build America, Buy America (BABA) Act¹ requirements for seeking waiver coverage as described in 2 CFR 184.7². This document consists of a series of frequently asked questions (FAQs) based on Office of Management and Budget (OMB) guidance^{3,4}, the U.S. Environmental Protection Agency (EPA) implementation procedures⁵, and other resources. This document does not address requirements associated with federal procurement or financial assistance from other federal agencies⁶. For current information on BABA implementation at the EPA, visit the [EPA's BABA website](#).

Q1. When can the EPA waive the BABA requirement?

A1. Pursuant to Section 70914(c) of the Build America, Buy America Act, the EPA may waive the BABA requirement where the Agency finds that:

1. Applying the domestic content procurement preference would be inconsistent with the 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. 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% (an "unreasonable cost waiver").

The most common type of project-specific waiver is a nonavailability waiver.

Q2. How does the EPA evaluate project-specific nonavailability waiver requests?

A2. Assistance recipients should make every effort to comply and perform due diligence by attempting to identify BABA-compliant products that meet the project's technical specifications. If no BABA-compliant products are identified through those efforts, the assistance recipient should also evaluate whether any general applicability waivers, such as the *De Minimis* Waiver, could be used for the non-compliant products. If none of these are viable options, a project-specific waiver request will need to be submitted⁷.

Once the necessary documentation is gathered, the assistance recipient should submit the request to the awarding agency, which performs an initial review of the request for completeness and accuracy.

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

² [2 CFR 184](#). Buy America Preferences for Infrastructure Projects.

³ [2 CFR 184](#). Guidance for Grants and Agreements.

⁴ [M-24-02](#). Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

⁵ [Build America, Buy America \(BABA\) EPA Programs](#).

⁶ See [MadeinAmerica.gov](#) for information on BABA implementation at other agencies.

⁷ [Information Checklist for Project-Specific BABA Waiver Requests](#)

After the awarding agency's review, the waiver request is sent to EPA headquarters for review and processing. During the initial EPA review, assistance recipients may be contacted if questions arise or additional documentation is needed. Once review is complete, the EPA proceeds with its own market research to locate potential BABA-compliant products that meet the project's technical specifications. The EPA then posts a proposed waiver for the statutorily required 15-day public comment period. If a BABA compliant product is located through either process, additional action may be needed by the assistance recipient (e.g., rationale for why a potential BABA-compliant product does not actually meet the project's technical specifications). If EPA determines the waiver is still justified, a decision memorandum is prepared for review by OMB's Made in America Office (MIAO) prior to agency signature.

The EPA recommends that all products for which waiver coverage may be needed be included in a single project-specific waiver request to the greatest extent practicable. In addition, the EPA strongly encourages assistance recipients to apply for project-specific waivers as early as possible to allow time for waiver processing prior to purchasing a product.

Q3. How does the EPA process waiver requests for co-funded projects?

A3. OMB Guidance M-24-02 says: "To avoid a need for duplicative waiver requests from entities that receive funding for one infrastructure project through multiple Federal agencies, the Federal agency contributing the greatest amount of Federal funds for the project may be considered the Cognizant Agency for Made in America ("Cognizant Agency") and may take responsibility for coordinating with the other Federal awarding agencies." OMB Guidance M-24-02 goes on to say, "a Cognizant Agency cannot independently issue a waiver that applies to other agencies, but other agencies may rely on the work performed by the Cognizant Agency when proposing and issuing waivers for a single infrastructure project. When appropriate, agencies may consider proposing a joint waiver including two or more agencies relying on the work performed by the Cognizant Agency."

Recognizing that sources of federal funding may come at varying timelines for a project, additional coordination will be needed between multiple funding agencies to ensure consistent implementation of BABA requirements. An assistance recipient should inform the EPA funding program when other federal programs are also funding or will fund the project. This will allow the EPA to coordinate with those co-funding agencies and determine the optimal implementation approach for the waivers without unnecessary disruption to the project.

Q4. For multi-year funded projects, how does the EPA evaluate eligibility for coverage under the Amended Design Planning Waiver?

A4: The EPA recognizes that funding may arrive at different times for projects receiving funding from multiple programs and/or from multiple federal appropriations. The EPA will use its discretion with respect to the Amended Design Planning Waiver to ensure consistency in BABA implementation without unnecessary disruption to the project. For example, if a project that was eligible for coverage under the Amended Design Planning Waiver receives additional federal funding from another EPA program, the original waiver will continue to apply to the whole project, so long as the additional funds are not related to an expansion of project scope. A "project" consists of any activity related to the construction, alteration, maintenance, or repair of infrastructure 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. For project-specific assistance, please reach out to BABA-OW@epa.gov.