



Rural Development
U.S. DEPARTMENT OF AGRICULTURE

Together, America Prospers



USDA Rural Development Build America, Buy America Act Customer Guide

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Because information changes, always consult official program regulations or contact your local USDA Rural Development office for help. A list is available at this link: <https://go.usa.gov/xJHPE>. You will find additional BABAA resources, forms, and program information at <https://www.rd.usda.gov/build-america-buy-america>. This guide does not outweigh technical and regulatory language in the Infrastructure Investment and Jobs Act (Public Law 117-58 – available at this link: <https://tinyurl.com/2p9hcpww> - PDF). In questions of precedence, always refer to the Public Law or regulation.

A note about website links: For ease of reference, this guide provides links to relevant, useful information hosted outside the USDA domain. Federal endorsement of non-USDA programs or activities is neither intended nor implied. Please be aware that, when you access information through a link provided in this document, you are subject to the copyright and licensing restrictions of those sites. All links in this document were active as of February 2023.

Introduction

The Build America, Buy America Act (BABAA) guide is designed to help USDA Rural Development (RD) financial assistance recipients and their design professionals, contractors, and material and product suppliers navigate part of the Infrastructure Investment and Jobs Act. Examples of RD financial assistance include loans or loan guarantees, grants, loan-grant combinations, and cooperative agreements.

Beginning February 4, 2023, all non-federal entities who receive RD financing for an infrastructure project that includes construction, alteration, maintenance, or repair are subject to BABAA unless a waiver is in place.

This customer guide offers an overview of BABAA and its role in increasing domestic manufacturing in communities across the country. It will help you determine if your project is subject to BABAA, and explain how to document compliance.

You will find additional BABAA information and links to important resources at this link: <https://www.rd.usda.gov/build-america-buy-america>.

Overview: What is “Build America, Buy America?”

When Congress passed the Infrastructure Investment and Jobs Act – also known as the Bipartisan Infrastructure Law – it made a once-in-a-generation investment in the nation’s infrastructure, and created a historic opportunity to increase domestic manufacturing across the country. With this law, we’re rebuilding America’s roads, bridges, and rails, expanding access to clean drinking water, getting high-speed internet into rural places, helping address the climate crisis, advancing environmental justice, and investing in communities that too often have been left behind.

In addition to addressing infrastructure issues, the Act also requires the use of American iron and steel, manufactured goods, and construction materials. In so doing, the Build America, Buy America Act (BABAA) will help stimulate private-sector investments in domestic manufacturing, bolster critical supply chains, and support the creation of well-paying jobs so America’s workers and firms can compete and lead globally.

The pandemic exposed gaps in America’s supply chains. Still, manufacturers need time to find on-shore suppliers and scale up production to meet demand. Federal agencies can issue BABAA waivers, but will do so judiciously and strategically, ensuring American-produced goods will be used once manufacturers are able to expand domestic production. Waivers will be limited, targeted, and conditional; covering specific items or periods of time to allow recipients and the private market to build capacity. BABAA waivers are not meant to impede American manufacturing. Instead, waivers are intended to send clear market signals and create incentives for American firms to invest in America – including generating jobs in rural communities.

You should plan early in the design phase of your project to incorporate products that meet BABAA requirements. We recommend contacting your USDA Rural Development representative before you devote significant time and money designing your project. You'll find a list of contacts on page 9.

It's important to know that Build America, Buy America applies to federal financial assistance programs for infrastructure, regardless of whether those programs received funding in the Infrastructure Investment and Jobs Act. These new, across the-board domestic content requirements present an unprecedented opportunity to support well-paying construction and manufacturing jobs while strengthening the industrial base and promoting American innovation for years to come.

Build America, Buy America creates unprecedented opportunity for a “virtuous cycle” in which infrastructure investment, critical supply chain efforts, and other priorities – including sustainability and equity – align and support each other.



Section 1

Do I have a Build America, Buy America-covered project?

BABAA applies to federally-funded infrastructure projects awarded to non-federal entities. However, if your total federal funding is below the Simplified Acquisition Threshold, (information is available at this link: <https://tinyurl.com/2epu3b2w>) – currently set at \$250,000 – BABAA requirements are waived.

For additional information about this waiver, please review the document “*USDA Department-wide Public Interest Waivers: De Minimis, Small Grants and Minor Components of Build America, Buy America, Provisions as Applied to Recipients of USDA Federal Financial Assistance*” (available at <https://tinyurl.com/2p8ch4t2> – PDF).

NOTE: This waiver applies to loans and loan guarantees, as well as to small grants.

If you determine the total federal funding associated with your project is at or above the Simplified Acquisition Threshold, use the following questions to see if you and your project are subject to BABAA:

1. Are you a non-federal entity?

BABAA applies only to non-federal entities. Examples of non-federal entities include state or local governments, Indian Tribes, institutions of higher education, or nonprofit organizations that carry out federal awards as recipients or subrecipients.

Regulatory definitions of non-federal entities are available at the following links:

- “Local governments” – available at <https://tinyurl.com/3yxsp3x5>
- “Indian Tribes” – available at: <https://tinyurl.com/ywfe9r8t>
- “Nonprofits” – available at <https://tinyurl.com/4edc2vkw>

Contact your USDA Rural Development representative if you are uncertain whether your business or organization is considered a non-federal entity. A list of state office contacts is available at this link: <https://go.usa.gov/xtpEe>.

NOTE: Even if BABAA requirements do not apply, other domestic preference requirements might. Examples include 7 CFR Part 1787, The “Buy American” requirement (available at this link: <https://tinyurl.com/y7awbhx3>), and “American Iron and Steel” requirements outlined in Rural Utilities Service (RUS) Bulletin 1780-35 (available at this link: <https://tinyurl.com/5c2sfcts> - PDF).

2. Are you financing an infrastructure project?

For BABAA purposes, “infrastructure” is defined as structures, facilities, and equipment for:

- roads
- highways
- bridges
- public transportation
- dams
- ports
- harbors and other maritime facilities
- intercity passenger and freight railroads
- freight and intermodal facilities
- airports
- water systems (including drinking and wastewater)
- electrical transmission facilities and systems
- utilities
- broadband infrastructure
- buildings and other real property

It also includes structures and equipment to generate, transport and distribute energy, including electric vehicle (EV) charging stations.

Does the scope of your project include construction, alteration, maintenance, or repair?

Under BABAA, all non-federal entities must comply with the domestic preference requirement when purchasing iron and steel, construction materials, or manufactured products employed in the construction, alteration, maintenance, and repair of infrastructure funded by federal programs.

If you answered “yes” to all of the questions above, you and your project are subject to BABAA. This requires that:

- All iron and steel used in the project – including manufacturing processes from the initial melting state through the application of coatings – are produced in the United States.
- All manufactured products used in your project are produced in the United States. This means the manufactured product itself was built in the United States, and the cost of the components of the manufactured product mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product. (Note: In some instances, other laws or regulations that determine minimum domestic content apply.)

- All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Build America, Buy America Act Project Evaluation and Determination Guidance (available at this link: <https://tinyurl.com/mw7k7yer>) can be used to help you determine whether your project must adhere to BABAA.

Your USDA Rural Development representative will be able to confirm your self-determination during the application process. They'll also let you know if other domestic procurement preferences apply.

Section 2

How do I document compliance with Build America, Buy America?

First, you need to determine whether the products used in your infrastructure project satisfy the BABAA requirement for all permanently installed iron, steel, manufactured products, and construction materials to be produced in the United States.

If the product is domestic, evidence from the manufacturer that demonstrates compliance with BABAA – such as an authoritative statement or certification specific to the purchase – is required.



USDA Rural Development BABAA Evidence Standards (available at this link: <https://tinyurl.com/mrte2x9x>) can be used to help you, your architect, engineer, contractors, and product manufacturers to document BABAA compliance.

Alternatively, sworn statements can be provided by supervising contractors or licensed architects and professional engineers. Refer to **Instructions for Submitting Build America Buy America Certifications** (available at this link: <https://tinyurl.com/edrxdpdf> - PDF) for sample statements.

Section 3

Where can I find examples of BABAA construction contract language?

USDA Rural Development has developed sample language that supports BABAA-covered construction requirements. You can find it at this link: <https://tinyurl.com/32h2wk9j> - PDF.

Section 4

What if I need to request a waiver?

USDA Rural Development BABAA waivers will be limited, targeted, and conditional. They will cover specific items or periods of time to allow USDA Rural Development financial assistance recipients and the private market to build capacity and respond to the new conditions. Waivers are not an alternative to increasing domestic production; they are a tool to promote investment in our domestic manufacturing base, strengthen supply chains, and position U.S. workers and businesses to compete globally.

Waivers can be requested for:

1. **Nonavailability.** Iron, steel or relevant manufactured goods or construction materials not produced or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality.
2. **Unreasonable cost.** The inclusion of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25 percent.
3. **Inconsistent with public interest.** Application of BABAA elements would be considered inconsistent with the public interest.

For example: USDA issued a departmentwide public interest waiver for de minimis, small grants, and minor components to help keep projects moving and prevent delays on critically-important projects; to continue providing economic opportunity through innovation, and to promote agriculture production.

For additional information about this waiver, please review the document *“USDA Departmentwide Public Interest Waivers: De Minimis, Small Grants and Minor*

Components of Build America, Buy America, Provisions as Applied to Recipients of USDA Federal Financial Assistance” (available at this link: <https://tinyurl.com/2p8ch4t2> – PDF).

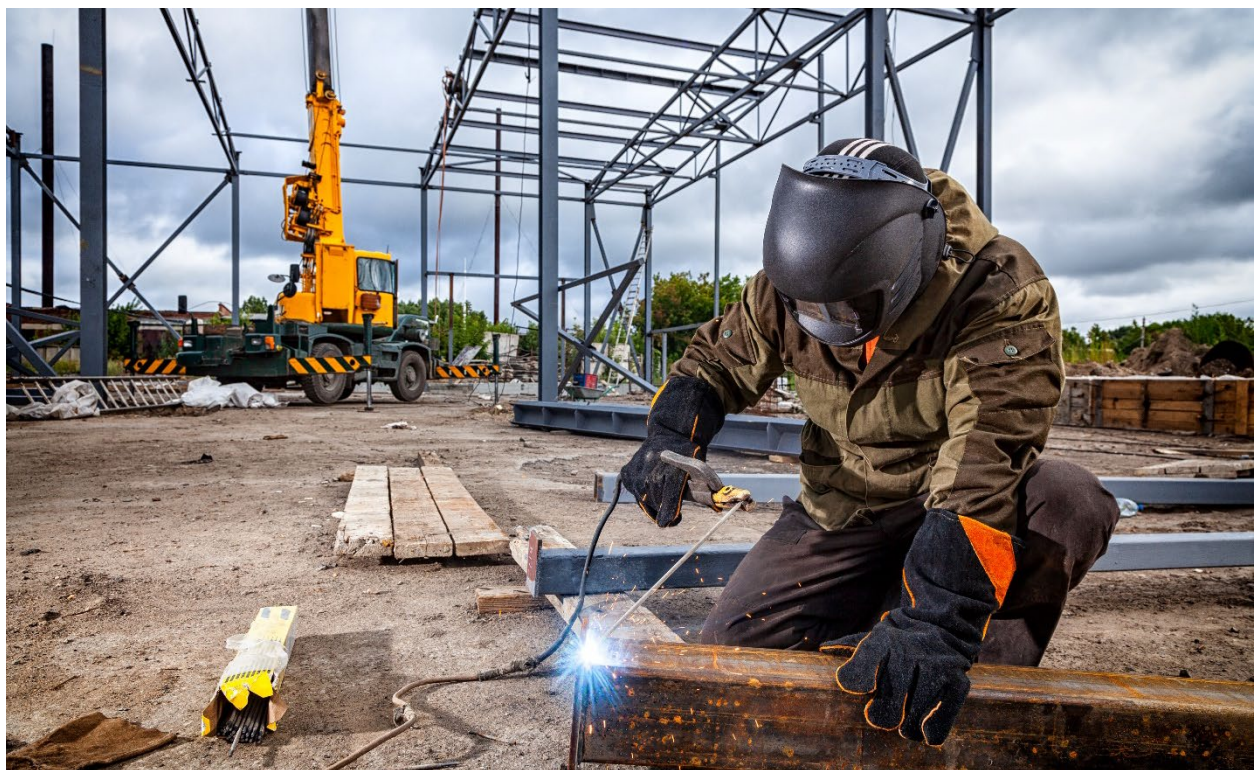
Reminder: The waiver applies to loans and loan guarantees, as well as to small grants. If you believe your project qualifies for a waiver, contact your USDA Rural Development representative for guidance. Your representative will:

1. Determine if domestic sources are available to meet BABAA requirements
2. Review existing waivers to determine if any apply to your project
3. Provide detailed guidance to submit a waiver request

If your USDA Rural Development representative determines a waiver request is appropriate, it is your responsibility to provide information specific to the material, manufactured product, or construction material for which the waiver is sought.

Most of this information is already available as part of your planning, design phase, or bid documents. Information should include the item description, price, date required, project location, and the name and address of the proposed supplier.

A list of required waiver information is available at this link: <https://tinyurl.com/yc5adwrd>. It is crucial to include a detailed, written justification for the use of a non-domestic product. You should show evidence of a good-faith effort to procure a domestically-produced product.





Contact Us

For additional assistance, please contact the USDA Rural Development program area associated with your project:

- **Rural Utilities Service Electric programs:**

Contact Electric Program customer service:

- Email: ElectricProgramCustomerService@rd.usda.gov
- Phone: (202) 720-1979

- **Rural Utilities Service Telecom programs:** contact the Telecom General Field Representative serving the state in which your project is located:

Telecom General Field Representatives: <https://go.usa.gov/xhrux>

- For all other USDA Rural Development programs, contact the office in the state in which your project is located:

List of USDA-RD state offices: <https://go.usa.gov/xtpEe>

You also can send general email inquiries to sm.rd.babaa.inquiry@usda.gov.

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To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, available at this link: <https://go.usa.gov/xzzfW>, and at any USDA office. Or, write a letter addressed to USDA and provide all of the information requested in the form. Call (866) 632-9992 to request a copy of the complaint form. Submit your completed form or letter to USDA by: (1) postal mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 (2) fax: (202) 690-7442, or (3) email: program.intake@usda.gov.

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