



MAKING BABA WORK FOR AMERICAN MANUFACTURERS

The Build America, Buy America Act (BABA) was signed into law by President Biden as part of the Bipartisan Infrastructure Law (BIL)—also known as the Infrastructure Investment and Jobs Act of 2021. BABA strengthens and expands “Buy America” requirements for federally financed infrastructure projects. Specifically, it requires that the iron, steel, construction materials, and manufactured products used in all federally assisted infrastructure projects be produced in the United States.

The idea behind BABA is simple: when taxpayer money is used to build infrastructure, the constituent products and materials should be made in the United States. The law will help strengthen U.S. businesses and their domestic supply chains and create opportunities for America’s workers to thrive. It will prevent inadvertently using tax dollars to support environmental, labor, and human rights violations that are unfortunately present in some foreign supply chains. It will ensure workers and manufacturers in the U.S. get the first shot at taxpayer-funded contracts for federally financed projects. It will also help strengthen domestic supply chains and ensure economic resilience in the face of international supply constraints that are becoming increasingly common.

BABA doesn’t just support the existing manufacturing base and workforce—it provides a powerful market signal to expand it. The certainty of ongoing infrastructure investments being subject to BABA means that manufacturers have a clearer understanding of the long-term demand for the products they produce, and a powerful incentive to expand their U.S. production. In cases where important infrastructure components are not currently manufactured domestically, the law allows commonsense waivers of the requirement. In limited cases, waivers of general applicability—such as those applied to a specific product—is appropriate so long as they are targeted, time-limited, and transparent. Far from circumventing the intent of BABA, narrowly applied and transparent waivers afford meaningful market insights. They can indicate the potential scope of demand for specific products and the absence—at present—of domestic manufacturers producing them. If implemented correctly, Buy America waivers are the mechanism to alert manufacturers to a major market opportunity if they can make a product domestically to fill the gap, while allowing projects to move forward in the meantime.

Congress has recently directed hundreds of billions of dollars in clean energy and other decarbonization infrastructure through the BIL and Inflation Reduction Act. BABA’s application to these investments supports manufacturing communities and workers, and in turn, will create a durable constituency of support from these communities and workers to ensure investments in clean infrastructure continue.

For America’s workers, strong Buy America policies are essential to making the transition away from fossil fuels to cleaner, renewable energy sources. Absent these requirements, our nation risks creating new dependencies on foreign sources for these critical sectors.

For American manufacturers, the passage of BABA means that billions of dollars are ready to be spent on the products you produce in the United States. This set of BABA questions and answers from the BlueGreen Alliance (BGA) is designed to guide you through the law, help you certify your products, and take advantage of this new opportunity.

The idea behind BABA is simple: when taxpayer money is used to build infrastructure, the constituent products and materials should be made in the United States.

What does the law say, exactly?

BABA requires that on or after May 14, 2022, the head of each 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.”¹

BABA doesn't just apply to the major infrastructure investments made by the BIL and the Inflation Reduction Act. It is a permanent law that applies to all federal financial assistance for infrastructure spending.

Detailed guidance on the specifics of BABA has been provided by the Office of Management and Budget (OMB), which in turn serves to guide the implementation of BABA by the federal agencies that administer financial assistance for infrastructure.² Some agencies have released additional guidance and issued implementing policies in the form of general waivers that address details specific to those agencies' programs and the types of projects that they fund. Additional guidance from OMB and agencies is expected as more projects covered by BABA are financed, planned, and constructed. In the meantime, awardees of federal financial assistance are expected to work with their funding agencies to clarify any potential questions.

How big of a market opportunity does BABA create for U.S. manufacturers?

BABA and other recent legislation will dramatically increase the demand for U.S. materials and products that are incorporated into federally assisted infrastructure products, in two main ways.

First, BABA expands the scope of products and projects subject to domestic sourcing requirements. Previous domestic content preference laws include the Buy American Act of 1933 (applicable to direct federal procurement and acquisition) and various Buy America laws, including a 1982 law applied to highway and transit projects. These existing laws were limited in their coverage and had been narrowed over the years by loopholes and implementing policies. The 2021 BABA law enhances Buy America laws applied to federally assisted infrastructure projects by expanding its coverage to all iron and steel, construction materials, and manufactured products for all infrastructure projects receiving federal financial assistance. This means a much larger number and wider scope of projects will be covered, and as a result, there will be much stronger demand for a much broader set of U.S.-produced materials and products, compared to prior policy. (See “What's the difference between Build America, Buy America and prior Buy America/n policy?” for more details.)

Second, the BIL and the Inflation Reduction Act have created a surge of new infrastructure spending on projects ranging from transportation to renewable electricity to building energy efficiency. BGA estimates that the BIL and Inflation Reduction Act allocated more than \$700 billion to programs that will require BABA compliance. Hundreds of billions of additional funding falls outside the scope of BABA but is subject to other incentives or requirements, such as domestic content bonuses for clean energy tax credits. Finally, BABA will continue to apply to the majority of the roughly \$100 billion per year that is spent on infrastructure, even after the BIL and Inflation Reduction Act funds have been spent.³

What types of projects require BABA compliance?

BABA applies to the construction, alteration, maintenance, or repair of public infrastructure undertaken by non-federal entities using federal financial assistance.

“Infrastructure” is defined very broadly, and includes the structures, facilities, and equipment for infrastructure. OMB provides the following illustrative list of types of infrastructure projects covered by BABA:

- 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
- Buildings and real property
- Structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle charging

Beyond these examples, a project may also be considered “public infrastructure” if it is “publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public.”⁴

“Federal financial assistance” is defined in the BIL to mean “all expenditures by a federal agency to a non-Federal entity for an infrastructure project.” This can include grants, loans, loan guarantees, cooperative agreements, non-cash contributions, donations of property, and direct assistance. Even if federal assistance is supplemented by other streams of funding, BABA still applies to the entire project.

“Non-federal entities” in this context means state, territorial, tribal, and local governments; institutions of higher education; and non-profit organizations. Projects undertaken by for-profit entities are not automatically covered by BABA but may be covered in certain circumstances. For instance, when a “non-federal entity” is the prime recipient of federal financial assistance, the BABA requirements “flow down” to all sub-awardees and sub-recipients of the assistance, as well as the contractors and sub-contractors undertaking the work, even if these are for-profit entities.

What types of projects do not require BABA compliance?

BABA does not apply if the federal financial assistance comes exclusively from tax credits. For example, projects funded under the Low-Income Housing Tax Credit or the Inflation Reduction Act’s various clean energy tax credits are not required to comply with BABA, unless they also receive an additional source of federal financial assistance. Note however that many of these tax credits have their domestic content provisions with origin standards and implementing policies that may differ from BABA.⁵

BABA does not apply to direct federal procurement, such as when federal agencies buy products or construct buildings for their own use, as this spending does not constitute “federal financial assistance” to a “non-federal agency”. However, this type of spending is covered by another law, the 1933 Buy American Act, which has both similarities and differences to BABA. (see What’s the Difference between Build America, Buy America and prior Buy America/n policy?)

BABA does not apply to projects that are not considered “infrastructure”. OMB defines infrastructure broadly, including all projects on its list of examples as well as other types of projects that are publicly owned or serve a public function. Projects are, therefore, exempt from BABA on these grounds only if they are not on OMB’s list

of examples, are privately owned, and are not publicly accessible. For instance, grants made to manufacturers to build and retool factories generally do not require BABA compliance.

Certain categories of buildings also do not fall under the definition of “public infrastructure”, although the exact scope is complicated. Private homes are explicitly exempted from the definition and thus not covered by BABA. Schools, government offices, and community centers do constitute public infrastructure and thus require BABA compliance, even if they are privately developed, owned, or operated. Mixed-use developments, commercial property, and multifamily housing may or may not be covered, depending on the specific details of the project and the discretion of the funding agency. Future guidance from OMB may clarify the applicability of BABA to different types of buildings and building projects.

Finally, following guidance from OMB, many agencies have adopted implementing policies designed to afford flexibility for smaller projects—including general waivers applicable to “Small Grants” of less than \$250,000 in total federal funding.⁶

What types of products are covered by BABA?

BABA applies to all iron and steel, construction materials, and manufactured products that are consumed in, incorporated into, or affixed to an infrastructure project. Each of these categories has a specific definition and a specific threshold for what is considered “produced in the United States.”

Category	Definition of “Produced in the United States”
Iron and Steel	All manufacturing processes, from initial melting through the application of coatings, occurred in the United States
Construction Materials	All manufacturing processes occurred in the United States
Manufactured Products	Final assembly of the product occurred in the United States, and 55% of components are of domestic origin

Iron and steel means building components and products composed entirely or predominantly of iron and steel, such as rebar, framing, pipes, and ductwork (See Appendix 1 for a more comprehensive list of examples). For iron and steel, every step of production must take place in the United States, beginning with initial melting (not reheating) and pouring, and including grinding, rolling, bending, reheating, casting, and the application of coatings, as applicable. Following OMB guidance, most agencies have issued a waiver allowing “minor components” of iron and steel products, valuing up to 5% of the total cost, to be of foreign or unknown origin. For instance, a steel frame would need to be domestically assembled from domestic steel, but the bolts holding it together could be imported.

Construction materials are defined as articles, materials, or supplies that consist primarily of one of the following:

- Non-ferrous metals (i.e., any metal other than iron or steel)
- Plastic and polymer-based products (including polyvinylchloride (PVC), composite building materials, and polymers used in fiber optic cables)
- Glass (including optic glass)
- Lumber
- Drywall
- Coatings (paints and stains)
- Optical fiber
- Clay brick
- Composite building materials
- Engineered wood products

To qualify, all manufacturing processes for the material in question must take place in the United States. For a specific breakdown of the required domestic manufacturing processes for each product, see Appendix 2.

Manufactured products are “articles, materials, or supplies that have been both 1) processed into a specific form or shape; and 2) are combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.”⁷ Or more simply, manufactured products are made of multiple materials and components combined into something new.

To qualify as “produced in the United States”, the final assembly of a manufactured product must take place domestically, and 55% of the product’s components by cost must be mined, manufactured, or produced in the United States. A component is an article, material, or supply incorporated directly into a manufactured product.

In calculating this 55% threshold, the manufacturer should consider the total cost of acquisition for each component, including transportation costs and duties. For components manufactured in-house, the total cost of production should be considered including transportation and overhead but excluding profit. Costs associated with the assembly of the final product should not be included in the cost of any component.

The following table shows a simple cost breakdown for a hypothetical Heating, Ventilation, and Air Conditioning (HVAC) product:

Component	Origin	Cost	Shipping costs	Import duties
Housing	Purchased domestically	\$90	\$10	NA
Motor	Manufactured in-house	\$200	NA	NA
Fan	Purchased from Canada	\$50	\$25	\$0
Circuitry	Purchased from China	\$75	\$25	\$25

Costs associated with domestic components	\$300
Total cost of components	\$500
Domestic component cost share	60%

Because the total costs of domestic components equal 60%, the product exceeds the 55% threshold and would constitute a BABA-compliant manufactured product, provided final assembly also took place in the U.S. Note that the costs of the final assembly of the product do not factor into this calculation at all.

How do I determine whether a specific product should be considered iron and steel, a building material, or a manufactured product?

Generally, the rules for building materials and iron and steel apply to products made predominantly of just one material, while manufactured products are made from multiple materials combined. For instance, a sheet of glass would be considered a building material, and a steel frame would be considered iron and steel, but a steel-framed glass window would be considered a manufactured product.

For manufactured products made out of iron and steel, the line between the two categories may not always be clear. The Code of Federal Regulations states that a product should be classified as iron and steel if “the cost of the iron and steel content exceeds 50 percent of the total cost of all its components”.⁸ This means that simple products made predominantly from iron and steel such as ductwork, piping, and valves should be considered iron and steel for BABA compliance even if they incorporate some components made from other materials. By

contrast, more complex products such as cranes, boilers, and generators will often be considered manufactured products—even if they contain a large amount of iron and steel, if other components make up much of the cost, they should be considered manufactured products. The Environmental Protection Agency (EPA) has written an extensive illustrative list of example products and how they should be categorized for EPA projects, reproduced in Appendix 1.

What types of products are *not* covered under BABA?

BABA covers only iron and steel, manufactured products, and construction materials consumed in, incorporated into, or affixed to an infrastructure project. This means that products such as tools, scaffolding, and vehicles used during construction are not covered. Contents of buildings, such as moveable furniture and portable computers, are likewise exempt. The Federal Emergency Management Agency (FEMA) and U.S. Department of Agriculture (USDA) have issued guidance saying that appliances such as stoves, dishwashers, refrigerators, and microwaves; as well as smoke and carbon monoxide detectors are considered building contents and exempt from BABA.^{9, 10} This determination will not apply to other agencies, and OMB has not issued any guidance on these products. On the other hand, systems such as HVAC and plumbing (including sinks and toilets) are considered to be permanently affixed and thus must comply.

BABA explicitly exempts cement; cementitious material; aggregates such as stone, sand, and gravel; and aggregate binding agents or additives. However, if these materials are combined to form a new product, the resulting item may be considered a manufactured product.

Consistent with OMB's guidance, many agencies have implemented a *de minimis* waiver allowing awardees to exempt materials and products making up to a cumulative 5% of the project's total budget for products and materials (up to a maximum of \$1 million). This means that products such as small hardware, wiring, and paint will not be required to meet BABA for most projects when the *de minimis* allowance is utilized.

How does a manufacturer demonstrate that their products are BABA compliant?

Manufacturers that supply products to covered infrastructure projects must self-certify by issuing documentation that includes the name of the project making use of the product, specific information about the product, the location of the manufacturing process, and an attestation that the product or material complies with BABA. Typically, this documentation would be a signed certification letter on company letterhead, although other forms of documentation may also be acceptable as long as the required information is included. This type of self-certification by manufacturers is already in widespread use for establishing compliance with prior domestic content requirements.

OMB's guidance does not prescribe uniform requirements for the form and content of manufacturers' compliance certifications. Agencies appear generally inclined to allow manufacturers and project developers to provide information most conveniently. For instance, EPA requests that self-certification documentation for manufactured products indicate the product meets the 55% domestic content threshold in its final form but does not require extensive "step certification" documentation for each step of manufacturing.¹¹ Appendix 3 contains example self-certification letters that companies can use as templates.

While documentation for manufactured products may require an affirmation that the product meets the 55% domestic content threshold, it does not need to indicate the exact percentage of domestic content of a product or any other details about a company's product sourcing or supply chain.

Awardees are responsible for demonstrating that their projects comply with applicable BABA requirements. Recipients of federal assistance must agree to meet the terms of BABA and be able to demonstrate that they have done so. They pass this obligation on to sub-awardees, contractors, and sub-contractors, who are in turn responsible for requesting self-certification documents from manufacturers.

Note that a generic, multi-use "to whom it may concern" letter attesting a product's BABA compliance is not sufficient. Self-certifications should be both project-specific and product-specific.

As a U.S. manufacturer, how can I ensure that my company stands to benefit from BABA?

There are several steps you can take to help funding recipients find and use your products in federally assisted infrastructure projects.

1. Pre-emptively assess your products for compliance and advertise them as such.

If you make products or materials in the United States that are used in covered infrastructure projects, double check that they meet the specific BABA requirements based on their category. All manufacturing processes must take place domestically for iron and steel and construction materials. For manufactured products, 55% of the components by cost must be of domestic origin and it must be manufactured in the United States.

You can then advertise your products as “BABA-compliant” on your website, in any online databases that list your products, and anywhere else you share information. Many major companies, such as Armstrong World Industries, are already doing this.¹²

The Department of Commerce, for example, which oversees several broadband infrastructure programs, has set up a process by which manufacturers can preemptively self-certify their products, allowing them to appear on a list for project developers. If your company makes products with applications in broadband infrastructure projects, consider filling out the Self-Certification Intake Form to appear on this list. To date, no other federal agency has set up a preemptive self-certification process or database like this one.¹³

2. Be ready to provide self-certification documentation to projects as needed.

A representative of your company will need to issue unique self-certification documentation for every project that uses your product. It is not sufficient to release a general-use “to whom it may concern” letter to be used by any project. However, it is permissible to create a template self-certification that can be updated with project and product information before a signature is added to attest to compliance.

In some cases, you may be contacted directly by an awardee or contractor building a project. In others, you may be contacted by the program officer at a federal agency or another organization working to assist an awardee. Either way, sharing information on your products and offering to provide project-specific self-certification documentation will be necessary.

3. Look at scouting opportunities from National Institute of Standards and Technology Manufacturing Extension Program (NIST MEP).

NIST MEP is helping awardees to scout for BABA-compliant suppliers. When a project awardee needs to find a BABA-compliant product, they can submit information to NIST MEP, who will search for domestic manufacturers that fulfill the need.

A list of current scouting opportunities is maintained on the NIST MEP website.¹⁴ A more detailed database is available from the MEP Center in North Dakota.¹⁵ If you make a product that fulfills the need detailed in the provided scouting opportunity documentation—or if you previously made such a product, could potentially retool to make it, or make a similar product—you can reply to the scouting opportunity. Scouting opportunities typically remain open for at least 30 days.

4. Keep an eye on product specific waivers.

The BABA law and OMB guidance allows awardees to request waivers from compliance on an ad hoc project-specific basis to overcome short-term market limitations that may exist, such as when a recipient can't identify a compliant product that fits the project's needs (non-availability waivers) or because the use of a domestic product or material would increase the overall cost of the project by more than 25% (unreasonable cost waivers).

Additionally, the law allows agencies to issue general applicability waivers when doing so is in the “public interest.” Such general waivers have been issued in certain instances to cover entire programs, specific products, or categories of products, although OMB has directed agencies to “always issue, construe, and apply waivers to ensure the maximum utilization of goods, products, and materials produced in the United States,” meaning that they be time-limited, targeted, and conditional.¹⁶

When a waiver is proposed, it is both reviewed by the agency and posted for public comment for at least 15 days before being approved. During the public comment period, waivers are generally posted to individual agency websites and, in some cases, are also made available at a central directory provided by the Made in America Office.¹⁷ This public website documenting waivers continues to be improved over time.

As a manufacturer of BABA compliant products and materials, you can treat these waivers like Requests for Proposals. If you see a non-availability waiver requested for a product you make, or a cost waiver including a product that you offer at a competitive price, you can issue a comment. The agency program officers will then be able to connect you with the project developer before a determination is completed on the proposed waiver.

Even if you discover a waiver after public comment has ended and the waiver has been granted, you can reach out to the agency to alert them to your product. They will then be able to direct subsequent developers seeking a waiver or information about this product to you.

What’s the difference between Build America, Buy America and prior Buy America/n policy?

Prior to the passage of BABA and the BIL, there were several different Buy American and Buy America laws and policies requiring the purchase, acquisition, or use of domestic goods for direct federal procurement or federally assisted infrastructure projects, respectively. Notable examples include:

- The Buy American Act of 1933, which applies only to direct federal procurement (i.e., federal agencies purchasing products or building projects for their own use). This law and its regulations are not impacted by BABA or its guidance.
- The Berry Amendment of 1941, which applies only to procurement of certain types of goods procured by the Department of Defense and is likewise not impacted by BABA.
- Buy America provisions within the Surface Transportation Assistance Act of 1982, which apply to federally assisted transportation projects like highway construction or the purchase of subway cars.
- The EPA’s 2014 and USDA’s 2017 American Iron and Steel (AIS) requirements, which apply only to iron and steel products procured for programs administered by these two agencies.

BABA expands upon these existing laws by requiring domestic procurement of all iron and steel, construction materials, and manufactured products used in any **federally assisted** infrastructure project. This is particularly important given that the BIL and Inflation Reduction Act authorized billions of dollars to support federally assisted infrastructure projects, which will need to comply with BABA. However, it should be noted that BABA does not only apply to these bills—it will remain in effect indefinitely for all other infrastructure projects regardless of the source of federal assistance funding.

Critically, Congress included a “savings provision” in the BABA text to preserve the application of Buy America laws and policies that preexisted the enactment of BABA. This provision was included to ensure that no existing Buy America laws or policies would be weakened during implementation of the new BABA requirements.

Since the passage of BABA, the Federal Highway Administration has indicated that it will update its Buy America implementing policies to be consistent with the 1982 Buy America law and the 2021 BABA law. This includes BABA’s definitions of “produced in the United States.”¹⁸ EPA has stated that compliance with the AIS requirements will be sufficient to demonstrate compliance with BABA for iron and steel products, but it has established new policies for construction materials and manufactured products.¹⁹

There are different origin standards and international obligations applicable to Buy American versus Buy America policies. For instance, the domestic content component thresholds for a manufactured product to comply with the Buy American Act of 1933 are higher than the equivalent requirements in BABA, so many Buy American compliant products should also be BABA compliant. However, there is one important difference between BABA and Buy American as it applies to U.S. international obligations made under the World Trade Organization. The Trade Agreements Act (TAA) allows certain domestic preferences policies to be waived in instances where the United States has entered into a reciprocal procurement trade agreement. The effect of these TAA waivers is that the eligible products from certain countries compete on comparable footing with U.S.-made products. However, this provision applies only to direct federal procurement covered by the Buy American Act. The United States has largely spared its Buy America laws and the federal-aid transportation infrastructure markets to which they apply from its trade obligations. For this reason, products that meet Buy American requirements may not be domestically BABA compliant. For instance, EPA has stated that it will not consider demonstration of Buy American compliance to be sufficient for BABA compliance.²⁰

Conclusion

The Build America, Buy America Act of 2021 represents an enormous market opportunity for domestic manufacturers. All federally assisted infrastructure projects must now use U.S.-produced iron and steel, construction materials, and manufactured products. These requirements are attached to more than \$700 billion being spent right now through the BIL and the Inflation Reduction Act, and to all future federally funded infrastructure.

Because the requirement is new, agencies and project developers are still figuring out how to find domestic products and comply with the law. As a domestic manufacturer, you can help these projects move forward and gain access to an enormous new market for domestic goods by verifying, advertising, and certifying the BABA compliant status of your company's products.



Appendix 1: example list of iron and steel products versus manufactured products from EPA²¹

Note that these examples are illustrative and not exhaustive and apply only to EPA programs.

Products likely made “primarily” of iron and steel to be classified as Iron and Steel under BABA: *Lined and Unlined Pipe; Flanges; Valves; Manhole Covers and other Municipal Castings; Iron or Steel Benches; Cast Iron Hinged Hatches; Cleanout/Monument Boxes; Curb Boxes; Detectable Warning Plates; Drainage Grate Frames and Curb Inlets; Lampposts; Meter Boxes; Steel Riser Rings; Tree Guards; Valve Box Covers and Risers; Angles; Lined and Unlined Fittings; Pipe Clamps and Restraints; Hydrants; Access Hatches; Bollards; Cast Iron Riser Rings; Construction Covers and Frames; Curb Openings; Downspout Shoes; Inlets; Manhole Rings and Frames; Service Boxes; Trash Receptacles; Trench Grates; Access Ramps; Backflow Preventers/Double Check Valves; Tanks; Structural Steel; Pre-Cast, Iron/Steel Reinforced Concrete (of all types, regardless of iron/steel content percentage); Ballast Screens; Cast Bases; Catch Basin Inlets; Curb and Corner Guards; Curb Stops; Drainage Grates; Junction Boxes; Manhole Risers; Steel Hinged Hatches; Tree Grates; Valve Boxes; Aeration Pipes and Fittings (separate from aeration/blowers); Baffle Curtains; Iron or Steel Bar; Cable Hanging Systems; Column Piping; Corrugated Pipe; Digester Covers; Doors; Expansion Tanks (diaphragm, surge, and hydropneumatics); Fire Escapes; Framing; Grating; Guardrails; Knife Gates; Lockers; Mud Valves; Overhead Rolling Doors/Uplifting Doors (manual open, no motor); Pipe Piling (any type of steel piling); Pitless Adaptors; Railings; Service Saddles; Solenoid Valves; Stationary Screens; Telescoping Valves; Tubing; Wall Panels; Well Casing; Wire Cloth; Bathroom Stalls; Clarifier Tanks; Concrete Reinforcing Bar,; Wire, and Fibers; Couplings; Dome Structures; Ductwork; Fasteners; Flanged Pipe; Gate Valves; Ground Testing Boxes; HVAC Registers, Diffusers, and Grilles; Ladders; Man Baskets and Material; Platforms; Municipal Casting Junctions; Pipe Connectors; Pipe Spool (pipe, flanges, connectors, etc.); Pre-fab Steel; Buildings/Sheds (simple structure, unfurnished); Reduced Pressure Zone (RPZ) Valves; Sheet Piling; Stairs; Surface Drains; Tipping Buckets; Valve Stem Extensions; Wall Sleeves/Floor Sleeves; Well Screens; Wire Rod; Beam Clamps; Coiled Steel; Condensate Sediment Traps; Decking; Door Hardware; Expansion Joints; Fencing and Fence Tubing; Flap Gates; Generic Hanging Brackets; Ground Test Wells; Joists; Lifting Hooks, J-bar, Connectors within, and Anchors for Concrete; Manhole Steps; Non-mechanical (aka stationary) Louvers and Dampers; Pipe Hangers; Pipe Supports; Pre-stressed Concrete Cylinder Pipe (PCCP); Roofing; Sinks (not part of eyewash systems); Static Mixers; Tapping Sleeves; Trusses; Valve Stems (excluding handwheels and actuators); Welding Rods; Wire; Wire Rope and Cables*

Products likely made “primarily” of iron and steel to be classified as Manufactured Products under BABA: *Actuator Superstructures/Support Structures; Analytical Instrumentation; Blowers/Aeration Equipment; Chemical Injection Quills; Compressors; Cranes; Dewatering Roll-offs; Electric/Pneumatic/Manual Accessories Used to Operate valves (such as electric valve actuators); Electrical Junction Boxes; Emergency Life Systems (including eyewash stations, emergency safety showers, fire extinguishers, fire suppression systems including sprinklers /piping/valves, first aid, etc.); Fiberglass Tank w/Appurtenances; Fluidized Bed Incinerators; Generators; Heat Exchangers; Aeration Nozzles and Injectors; Analyzers (e.g., ozone, oxygen); Boilers, Boiler Systems; Chemical Injectors; Controls and Switches; Desiccant Air Dryer Tanks; Disinfection Systems; Electrical Cabinetry and Housings (such as electrical boxes/enclosures); Electronic Door Locks; Exhaust Fans; Filters (and appurtenances, including underdrains, backwash systems); Galvanized Anodes/Cathodic Protection; Geothermal Systems; HVAC (excluding ductwork); Aerators; Automated Water Fill Stations; Chemical Feed Systems (e.g., polymer, coagulant, treatment chemicals); Clarifier Mechanisms/ Arms; Conveyors; Dewatering Equipment; Drives (e.g., variable frequency drives); Electrical Conduit; Elevator Systems (hydraulic, etc.); Fall Protection Anchor Points; Flocculators; Gear Reducers; Grinders; 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, and Handles; Voltage Transformer; Water Electrostatic Precipitators (WESP); Water Heaters; Weir Gates*

Appendix 2: Construction Material Details²²

The following table contains additional details on how OMB defines “all manufacturing processes occurred in the United States” for each construction material. The information is reproduced from OMB guidance.

Construction Material	Processes that must occur in the United States
Non-ferrous metals	Initial smelting or melting through final shaping, coating, and assembly
Plastic and polymer-based products	Initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form
Glass	Initial batching and melting of raw materials through annealing, cooling, and cutting
Fiber optic cable (including drop cable)	The initial ribboning (if applicable), through buffering, fiber stranding and jacketing. This also includes the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
Optical fiber	The initial preform fabrication stage through the completion of the draw
Lumber	Initial debarking through treatment and planning
Drywall	Initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels
Engineered wood	The initial combination of constituent materials until the wood product is in its final form

Appendix 3: sample self-certification letters from FEMA²³

Sample final certification letter: This should be prepared and sent by the manufacturer who performs the final assembly of the product or material and delivers it to the worksite. This format represents the minimum information required for compliance.

Company letterhead

Date
 Company Name
 Company Address
 City, State Zip

Subject: Build America, Buy America Act Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the Build America, Buy America Act (BABAA) requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:_____.

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Signed by company representative _____

Sample step certification letter: This is a slightly more detailed type of certification, preferred by FEMA and some other agencies when possible. Individual step certification letters would be prepared at each step of production, to certify that the step took place in the United States. This is most appropriate for simple materials like iron and steel that go through a linear, easily traceable production process with relatively few steps. For more complex products, step certification is unlikely to be feasible, and final certification may be used instead.

Company letterhead

Date
Company Name
Company Address
City, State Zip

Subject: Build America, Buy America Act Step Certification for Project (XXXXXXXXXX)

I, (company representative), certify the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the Build America, Buy America Act Best Practices for Documenting Compliance with BABAA 7 (BABAA) requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:_____.

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Signed by company representative _____

Endnotes

- 1 U.S. Congress, Public Law 117–58, November 15, 2021. <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>
- 2 U.S. Office of Management and Budget, M-24-02 Implementation Guidance for Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, October 25, 2023. <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>
- 3 Congressional Budget Office, Public Spending on Transportation and Water Infrastructure, 1956 to 2017, October 2018. <https://www.cbo.gov/system/files/2018-10/54539-Infrastructure.pdf>
- 4 Code of Federal Regulations, 1 CFR 184.4 Applying the Buy America Preference to a Federal award. <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-184/section-184.4>
- 5 In particular, projects must meet domestic content requirements to take full advantage of the Inflation Reduction Act's direct pay option allowing tax credits to be claimed as an up-front cash payment. As a result, many federally subsidized projects are expected to use domestic content even when not directly required by BABA. See [BGA's User Guide](#) for more details.
- 6 "Small Grants" waivers are tied to the Simplified Acquisition Threshold (SAT) and may vary by agency and change over time.
- 7 Code of Federal Regulations, 1 CFR 184.3 Definitions. <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-184/section-184.3>
- 8 Ibid.
- 9 U.S. Department of Agriculture Rural Development, Build America, Buy America Act (BABAA) External Webinar Questions and Answers, January 27, 2023. <https://www.rd.usda.gov/media/file/download/babaa-external-training-questions-and-answers>
- 10 U.S. Federal Emergency Management Agency FEMA, FEMA Policy: Buy America Preference in FEMA Financial Assistance Programs for Infrastructure, FEMA Policy #207-22-0001, April 25, 2024. https://www.fema.gov/sites/default/files/documents/fema_gpd-babaa-policy_042024.pdf
- 11 U.S. Environmental Protection Agency Office of Land and Emergency Management, Frequently Asked Questions for Build America, Buy America Act (BABA), March 2, 2023. https://www.epa.gov/system/files/documents/2023-03/OLEM_BABA_FAQs_Final_March_2_2023.pdf
- 12 Armstrong World Industries, Build America, Buy America (BABA) Act. <https://www.armstrongceilings.com/commercial/en/programs-services/build-america-buy-america-baba-act-armstrong-products.html>
- 13 National Telecommunications and Information Administration, "Intake Form for Build America Buy America (BABA) Self-Certification List for the Broadband Equity Access and Deployment (BEAD) Program." https://broadbandusa.ntia.doc.gov/sites/default/files/2024-07/BEAD_BABA_Self_Certification_Intake_Form.pdf
- 14 National Institute of Standards and Technology, MEP National Network Open Supplier Scouting Opportunities, December 9, 2024. <https://www.nist.gov/mep/mep-national-network-open-supplier-scouting-opportunities>
- 15 Impact Dakota, Open Supplier Scouting Opportunities. <https://www.impactdakota.com/scouting/opportunities/>
- 16 U.S. Office of Management and Budget, M-24-02 Implementation Guidance for Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, October 25, 2023. <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>
- 17 Made in America, Buy America Waivers for Federal Financial Assistance. <https://www.madeinamerica.gov/waivers/financial-assistance/>
- 18 U.S. Department of Transportation Federal Highway Administration, Buy America Requirements for Manufactured Products, March 12, 2024. <https://www.federalregister.gov/documents/2024/03/12/2024-05182/buy-america-requirements-for-manufactured-products>
- 19 U.S. Environmental Protection Agency Office of Land and Emergency Management, Frequently Asked Questions for Build America, Buy America Act (BABA), March 2, 2023. https://www.epa.gov/system/files/documents/2023-03/OLEM_BABA_FAQs_Final_March_2_2023.pdf
- 20 Ibid.
- 21 Ibid.
- 22 U.S. Office of Management and Budget, M-24-02 Implementation Guidance for Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, October 25, 2023. <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>
- 23 U.S. Federal Emergency Management Agency, BABAA Best Practices, January 2023. https://www.fema.gov/sites/default/files/documents/fema_best-practices-documenting-compliance-babaa.pdf