Frequently Asked Questions for Build America, Buy America Act

United Stated Environmental Protection Agency

Office of Air and Radiation: Climate Pollution Reduction Grants Program

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The following frequently asked questions (FAQs) are for the Environmental Protection Agency's (EPA) Climate Pollution Reduction Grants (CPRG) Program. Responses are based on the Build America, Buy America Act (BABA)[1], Office and Management and Budget (OMB) guidance[2,3], and EPA guidance, among other resources.

These FAQs will be added to or updated as necessary, including if subsequent regulations or guidance is proposed and finalized by OMB[4]. These FAQs are designed to assist federal financial assistance recipients and EPA project officers in determining whether and how BABA applies to projects receiving federal funding. For current information on BABA requirements and waivers, visit EPA's BABA website: https://www.epa.gov/baba. Recipients are encouraged to work with their EPA project officer, and EPA project officers are encouraged to work with their headquarters contacts. Questions may also be submitted to BABA-CPRG@EPA.gov.

The FAQs in this document apply to the implementation of BABA requirements for the CPRG Program unless otherwise superseded by regulation, statute, or other applicable guidance. This document is organized to provide responses to questions in the following topic areas:

Section 1: General Information 5
1. What is the Build America, Buy America Act (BABA)? 5
2. What is "federal financial assistance"? 5
3. What is the effective date of BABA? 5
4. Does BABA end or sunset? 5
5. Where can I find more information about BABA? 5

Section 2: Applicability 6
1. How is "infrastructure" defined for BABA? 6
2. Is there a test to determine whether my project is an "infrastructure" project? 6
3. What is a "project"? 7
4. How is "Purpose, Time, and Place" (PTP) used to determine the scope of a project? 7
5. How do I know if my project is "publicly owned"? 8
6. (ADDED 5/1/25) How do I know if my project is "a place of public accommodation"? 8

[1] Build America, Buy America Act (BABA). Pub. L. No. 117-58, §§ 70901-52
[2] https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf
[3] https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-184
[4] https://www.federalregister.gov/documents/2023/02/09/2023-02617/guidance-for-grants-and-agreements

7. Do BABA requirements apply to federal financial assistance provided to eligible private entities for a project solely for private use? 8
8. (ADDED 5/1/25) Can EPA provide additional detail and examples on the definition of public infrastructure as it relates to BABA applicability under CPRG? 8
9. (ADDED 5/1/25) Do BABA requirements apply to federal financial assistance provided to projects at multifamily homes or mixed-use properties? 9
10. If I am a subrecipient of federal financial assistance, and I hire a contractor to carry out the project, does BABA still apply to my project? 10
11. (ADDED 5/1/25) Do BABA requirements apply to federal financial assistance provided through Participant Support Costs? 10
12. Do federally funded infrastructure projects outside of the United States need to comply with the BABA requirements? 10
13. If most of the project is BABA compliant, and a small portion is not, can an assistance recipient self-fund (i.e., pay with non-federal dollars) the non-compliant products? 10

Section 3: Product Coverage 12
1. What are the categories of products covered under BABA? 12
2. What does iron and steel mean? 12
3. For iron and steel products, does a manufacturer need to demonstrate compliance from initial melting through the finished product (including coatings)? 12
4. For products made of iron and steel, what is the difference between “predominantly” and “primarily” iron and steel? 12
5. Does EPA have a list of products that are classified as “Iron and Steel” under BABA? 12
6. What is the definition of construction materials (with examples)? 13
7. What are the specific BABA requirements for construction materials? 13
8. What are manufactured products (with examples)? 14
9. (ADDED 5/1/25) What does “manufactured in the United States” mean in terms of BABA? 14
10. Does EPA have a list of products that could be made “primarily” of iron and steel but would be classified as “manufactured products” under BABA? 15
11. Which category will certain items fall under for BABA? 15
12. What are “Section 70917(c) materials”? 15
13. Is asphalt paving a covered product under BABA? 15
14. Are products and materials that purposefully decay or decompose considered permanent items that are subject to the BABA requirements? 15
15. (ADDED 5/1/25) What is the definition of "mobile source vehicles/engines" for purposes of determining applicability of BABA requirements for projects funded by CPRG implementation grants? 15

Section 4: Implementation (Compliance and Enforcement) 17

1. Who is responsible for BABA compliance and enforcement? 17
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 once products are incorporated into the project (i.e., used)? 17
3. Will EPA provide documentation for BABA for bid solicitations and suggested contract language? Will EPA provide suggested language for Assistance Agreements? 17
4. How can product compliance with the BABA requirements be demonstrated? 18
5. Will EPA provide a form or template for tracking and documenting compliance? 18
6. If a manufacturer claims to comply with the Buy American Act, does it also comply with BABA? 19
7. How will assistance recipients manage certification letters for every product used in an infrastructure project? 19
8. Who is responsible for documenting the 55 percent domestic content requirement for manufactured products under BABA? What if the final manufacturer cannot trace or verify domestic origin for all components? 19
9. How do final product fabricators document compliance when the final step of manufacturing may be simply assembling components? 19
10. Will Material Test Reports be acceptable in lieu of a BABA certification for iron and steel? 20
11. Can a manufacturer use a fillable certification letter for products? 20
12. Are product certifications from suppliers and distributors allowed? 20
13. How long should assistance recipients keep compliance documentation? 20

Section 5: Implementation (Waivers) 21
1. Are federal agencies able to waive BABA requirements? 21
2. Are there waivers that might apply to my project? 21
3. What should I do if my project is covered by a program-wide or agency-wide waiver? Do I need to maintain documentation? 21
4. Who may apply for a waiver and how do you apply? 21
5. If a product is not readily available domestically, will EPA provide product waivers? 22
6. 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 unreasonable costs? 22
7. 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? 22
8. 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)? 22
9. How can assistance recipients and construction contractors address product delivery delays? 23

Section 6: Co-funding 24
1. If projects are co-funded with funding mechanisms that do not require BABA, must the entire project comply with BABA? 24

2. How will project requirements be determined for co-funded projects subject to different programmatic or waiver conditions? 24
3. When a project receives funding from multiple EPA assistance programs, how will the agency determine which waivers apply? 24
4. When a project receives funding from Federal assistance programs in multiple agencies (e.g., EPA and USDA; EPA, FEMA, and DOT), how will potentially different waivers be implemented? 24
5. When a project receives funding from multiple assistance programs (within EPA or from separate agencies), which agency provides oversight for BABA implementation? 24
6. When does the Cognizant Agency concept apply to waivers? 25

Section 7: Miscellaneous 26
1. How do international trade agreements affect the implementation of the BABA requirements? 26

Appendix 1: Example Construction Contract Language for BABA 27

Appendix 2: Example Assistance Agreement Language for BABA 28

Appendix 3: BABA Applicability for example projects 29

Appendix 4: Products likely made "primarily" of iron and steel to be classified as Iron and Steel 31

Appendix 5: Products likely made "primarily" of iron and steel to be classified as Manufactured Products 33

Appendix 6: Waiver Request process 34

Appendix 7: Approved EPA Agency-wide BABA Waivers 36

Section 1: General Information

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

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 70194(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.

2. What is "federal financial assistance"?

Federal financial assistance means financial assistance from the federal government 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.

3. What is the effective date of BABA?

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

4. Does BABA end or sunset?

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

5. Where can I find more information about BABA?

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 M-24-02: https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf
- OMB's final Guidance for Grants and Agreements (2 CFR 184): https://www.federalregister.gov/documents/2023/08/23/2023-17724/guidance-for-grants-and-agreements
- EPA's General Terms and Conditions: https://www.epa.gov/system/files/documents/2024-10/fy_2025_epa_general_terms_and_conditions_effective_october_1_2024_or_later.pdf

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

Section 2: APPLICABILITY

1. How is "infrastructure" defined for BABA?

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[5].

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, or is a place of public accommodation*, as opposed to a project that is privately owned and not open to the public. Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer.

Projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project. In addition, any mobile source (vehicles/engines) funded by this program would not be considered "infrastructure" as stated in the CPRG Program Implementation Grant Competition Notices of Funding Opportunity (EPA-R-OAR-CPRGI-23-07; EPA-R-OAR-CPRGT-23-09).

BABA requirements apply to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does 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 / feasibility studies, or other non-construction services.

2. Is there a test to determine whether my project is an "infrastructure" project?

The following provides an outline of how to determine whether a project would be considered an "infrastructure" project for the CPRG program. Where there are gray areas of interpretation, the recipient should contact their project officer for further guidance for their specific situation. See Appendix 3 for additional examples.

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?

[5] 2 CFR 184.4(c).

a) 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 prior question)
    - 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 being 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 iron, steel, manufactured goods, or construction materials that will remain with the project, i.e., that will 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 is subject to BABA requirements (although waivers may be granted).

3. What is a "project"?

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 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.

4. How is "Purpose, Time, and Place" (PTP) used to determine the scope of a project?

When questions arise regarding the extent of an infrastructure project, EPA will use a "Purpose, Time, and Place" (PTP) test to determine a "project" for BABA applicability.[6]

While each analysis will be fact- specific, generally the PTP test will consider whether, regardless of the number of individual awards, contracts or subawards, the activities funded are closely related in purpose, time, and place. 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."

[6] The PTP test has been used in other similar applications, e.g., by the Department of Labor for applicability of Davis Bacon labor standards and by the EPA in defining a "project" under the American Iron and Steel requirements that apply to the Clean Water State Revolving Fund and Drinking Water State Revolving Fund programs and the Water Infrastructure Finance and Innovation Act program. See, Department of Labor Memorandum dated May 29, 2009, titled "Applicability of Davis-Bacon labor standards to federal and federally-assisted construction work funded in whole or in part under provisions of the American Recovery and Reinvestment Act of 2009" (DOL ARRA DB Memorandum)

Purpose: Is the purpose for the funded activity segregable? For example, a CPRG grantee is awarded $50 million. The grantee plans to fund $25 million each in subawards to two different subrecipients for different projects (e.g., construction of bike paths and geothermal wells). The purpose of the financial assistance to each subrecipient is distinct and each subaward would be considered distinct "projects" for BABA compliance.

Time: Is the timing of the funded activity distinct? For example, in FY24, a state receives a grant to install community solar in disadvantaged communities throughout the state. In FY25, the state receives a grant from CPRG to install battery storage and electric vehicle chargers in the same disadvantaged communities. These are both distinct in purpose and time and would be distinct "projects."

Place: Is the location of the funded activity distinct? A grantee receives an implementation grant from EPA under the CPRG program. The grantee plans to use this funding to implement energy efficiency measures in public buildings in two different disadvantaged communities. Each grant has unique structural requirements. The place of each activity is distinct and would be considered separate "projects."

5. How do I know if my project is "publicly owned"?

Generally, the project may be "publicly owned" when the recipient is a governmental entity (e.g., federal, state, county, municipality, Tribe). Publicly owned property does not necessarily provide access to members of the general public, thus "publicly owned" is not synonymous with "publicly accessible."

6. (ADDED 5/1/25) How do I know if my project is "a place of public accommodation"?

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.

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

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 a public infrastructure project for the purposes of BABA." This would include projects adding solar panels, battery storage, or electric vehicle chargers to private residences for the exclusive benefit of the owners/residents.

8. (ADDED 5/1/25) Can EPA provide additional detail and examples on the definition of public infrastructure as it relates to BABA applicability under CPRG?

BABA applies to all "public infrastructure" projects funded by federal financial assistance. EPA interprets the definition of infrastructure consistent with 2 CFR 184 and M-24-02 (memorandum dated as of October 23, 2023), including the "public function" test, when determining whether projects qualify as public infrastructure, based on the Civil Rights Act definition of public accommodation.

The following types of projects are generally considered infrastructure for the purposes of BABA applicability:

1. The public infrastructure portion of any property (e.g., retail in a mixed-use multi-family property) where the principal purpose of the financial assistance is to directly benefit such portion of the property;
2. Privately-owned commercial buildings when they meet the "public function" test;
3. Residential-serving community solar projects, which EPA deems "structures, facilities, and equipment that generate, transport, and distribute energy" per 2 CFR 184.4(c);
4. Publicly accessible EV charging stations;
5. Publicly owned energy generation and/or storage transportation facilities;
6. Publicly owned transportation facilities (e.g., bus depot);
7. Privately-owned transportation facilities that serve a public function.

The following types of projects are generally not considered infrastructure for the purposes of BABA applicability:

1. Privately-owned manufacturing or industrial facilities;
2. Privately-owned offices;
3. Any privately-owned, behind-the-meter energy generation and storage project that does not otherwise meet the definition of infrastructure.

9. (ADDED 5/1/25) Do BABA requirements apply to federal financial assistance provided to projects at multifamily homes or mixed-use properties?

Consistent with the Build America Buy America Act (BABA) statute, 2 CFR 184, and M-24-02, EPA has provided the following guidance regarding BABA applicability to various residential projects. Questions regarding BABA applicability to other types of residential projects should be directed to the CPRG BABA team.

Project Category	BABA Applies?
Privately-owned multifamily homes (unsubsidized): • Not mixed-use • Not a publicly accessible community center, roadway, or EV charging station	No
Privately-owned multifamily homes or mixed-use property • Publicly accessible community center, roadway, or EV charging station	Yes
Mixed-use property (unsubsidized): • Project primarily serves non-residential portion of multifamily property that meets public function test (e.g., commercial with public access)	Yes
Mixed-use property (unsubsidized): • Project primarily serves private housing units in property but also includes commercial space with public access. • Not a publicly accessible community center, roadway, or EV charging station	Case-specific depending on public function

The inclusion of the following types of funding, support, guarantee, or sponsorship for the project does not inherently mean that BABA requirements apply to the project:

- Low-Income Housing Tax Credit (LIHTC);
- Fannie Mae and Freddie Mac Backed Multifamily Mortgages;
- Federal Housing Administration Insured Multifamily Mortgages;
- HUD Section 8 Funding;
- Other Federal, State, Tribal, or Local Housing Assistance Funding Sources: in general, subsidies issued by federal, state, tribal, or local housing assistance funding sources that do not confer equity or ownership stakes for the governmental funding source do not trigger BABA applicability.

10. If I am a subrecipient of federal financial assistance, and I hire a contractor to carry out the project, does BABA still apply to my project?

Yes. The BABA requirements attach to the federal funding. Subawards are required to conform to the terms and conditions of the Federal award from which they flow. For example, if a subrecipient hires a contractor for a project considered "infrastructure," the subrecipient through their contractor would need to make sure that the products incorporated into the project were made domestically in accordance with BABA requirements unless a waiver is granted.

11. (ADDED 5/1/25) Do BABA requirements apply to federal financial assistance provided through Participant Support Costs?

Yes. Expenditures a grantee makes for subsidies, rebates, or other forms of Participant Support Cost (PSC) payments are subject to BABA if the expenditures are for an infrastructure project. BABA applies to all expenditures by a Federal agency to a non- Federal entity for an infrastructure project, unless covered by a statutorily authorized waiver. For example, PSCs for infrastructure projects, such as construction, alteration, or repair projects, that fall under the $250,000 small project waiver will not be subject to the BABA requirements. Additionally, PSCs related to improvements to private single-family homes are not subject to BABA as these projects do not meet the definition of "infrastructure" (e.g., rebates for residential electric vehicle chargers that are exclusively for private use).

12. Do federally funded infrastructure projects outside of the United States need to comply with the BABA requirements?

No. According to the OMB Guidance (M-24-02), an "infrastructure project" is defined as "…any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project." Therefore, the BABA requirements are not implicated for infrastructure projects occurring outside of the United States, such as projects funded through the United States-Mexico-Canada Agreement with infrastructure activities occurring in Mexico or Canada (that is, outside the United States). U.S. territories are considered part of the United States.

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

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. That is, 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. Section 70917(c) materials or temporary items removed before project completion). 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: Build America, Buy America (BABA) Approved Waivers | US EPA.

Section 3: PRODUCT COVERAGE

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

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 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. (See the following questions for more details on the above categories.)

2. What does iron and steel mean?

Per 2 CFR 184.3 and OMB M-24-02, a product will fall into the iron and steel category if it is wholly or "predominantly 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 it's the product's 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.

3. For iron and steel products, does a manufacturer need to demonstrate compliance from initial melting through the finished product (including coatings)?

For iron and steel products, BABA requirements are that all of the iron and steel in a covered product (that is, the product that is comprised of more than 50 percent iron and steel by material cost) 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.

4. For products made of iron and steel, what is the difference between "predominantly" and "primarily" iron and steel?

EPA considers the terms "predominantly" and "primarily" to be interchangeable, such that a product is considered predominantly (or primarily) iron and steel if it contains greater than 50 percent iron and steel by material cost.

5. Does EPA have a list of products that are classified as "Iron and Steel" under BABA?

Although this list is not comprehensive, EPA has identified the products listed in Appendix 4 of this document as primarily (more than 50 percent) of iron and/or steel by materials cost.

6. What is the definition of construction materials (with examples)?

From 2 CFR 184.3: "construction materials" include an article, material, or supply (other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; aggregate binding agents or additives; or non-permanent products) 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),
- optical 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; and 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 and is 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. Another common construction material for infrastructure projects would be polyvinyl chloride (PVC) pipe, fittings, and conduit. However, if PVC components are incorporated into a more complex product such as instrumentation and control equipment, those items would be manufactured products.

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

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

Table 1. Construction material standards

Construction Material	Standards/requirements to be considered "produced in the United States
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

8. What are manufactured products (with examples)?

From 2 CFR 184.3: "Manufactured products means: (1) Articles, materials, or supplies that have been: (i) Processed into a specific form and shape; or (ii) 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.

The manufactured products category is anticipated to cover the majority of potential infrastructure products, including complex products made up of a variety of material types and components. Common manufactured products include, but are not limited to, electric vehicle charging stations, solar panels, heat pumps, motors, generators, instrumentation and control systems, gauges, meters, measurement equipment, treatment equipment, anaerobic digesters, optical sorters, and geomembranes.

From OMB Guidance M-24-02: "…all manufactured products used in the project are 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…"

OMB's guidance in 2 CFR 184.5 provides instructions for determining the cost of components for manufactured products based on whether the components are purchased by or manufactured by the manufacturer.

9. (ADDED 5/1/25) What does "manufactured in the United States" mean in terms of BABA?

A product can be considered "manufactured in the United States" if the manufacturer (i.e., "the entity that performs the final manufacturing process that produces a manufactured product," 2 CFR 184.3 "Manufacturer") performs the final manufacturing process in the U.S.; in other words, the manufactured product must be the result of "articles, materials, or supplies that have been (i) processed into a specific form and shape; or (ii) combined with other articles, materials, and supplies to create a product with different properties than the individual articles, materials, or supplies" in the U.S. (2 CFR 184.3 "Manufactured products").

In some instances, products or equipment may be delivered to the project or work site as a "kit". A kit is defined as "a product that is acquired for incorporation into an infrastructure project from a single manufacturer... that is manufactured or assembled from constituent components on the work site by a

contractor" (88 FR 57750). A product that is acquired from a manufacturer as a kit is considered "manufactured in the United States" if final assembly or installation of the product occurs at the work site. The manufacturer of the equipment must be able to demonstrate upon request that 1) delivering the equipment as a kit (i.e., in separate components for assembly at the work site) is standard business practice in the industry versus delivering the product as a single, complete unit, and 2) the manufacturer produces components of the kit and/or is meaningfully involved in the manufacturing process of the components.

10. Does EPA have a list of products that could be made "primarily" of iron and steel but would be classified as "manufactured products" under BABA?

Although this list is not comprehensive, EPA has identified the products in Appendix 5 of this document to be "manufactured products" under BABA, even if an item might be composed primarily of iron and steel by materials cost.

11. Which category will certain items fall under for BABA?

In accordance with OMB's 2 CFR 184.4(e), an article, material, or supply should be classified into only one of the four categories: iron and steel, manufactured products, construction materials, or Section 70917(c) materials. A manufactured product may include components that are construction materials, iron or steel products, or section 70917(c) materials.

12. What are "Section 70917(c) materials"?

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.

13. Is asphalt paving a covered product under BABA?

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).

14. Are products and materials that purposefully decay or decompose considered permanent items that are subject to the BABA requirements?

No, BABA requirements do not apply to purposefully decaying and decomposing items not intended to be permanent or incorporated into a structure.

15. (ADDED 5/1/25) What is the definition of "mobile source vehicles/engines" for purposes of determining applicability of BABA requirements for projects funded by CPRG implementation grants?

As stated in the CPRG Implementation Grants Notices of Funding Opportunity[7,8], "any mobile source vehicles/engines funded by [the CPRG program] would not be considered 'infrastructure'" in the context of BABA requirements for this specific program. This interpretation does not extend to other financial assistance programs funded by EPA. Consistent with the definition of "mobile sources" under 40 CFR 51.491, in this context the term "mobile sources vehicles/engines" means on-road (highway) vehicles (e.g., automobiles, trucks and motorcycles) and nonroad vehicles (e.g., trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road motorcycles, and marine vessels).

[7] https://www.epa.gov/system/files/documents/2024-01/cprg-general-competition-correction.pdf
[8] https://www.epa.gov/system/files/documents/2024-01/cprg_tribal_nofo_correction_12-18-23_0.pdf

Under CPRG, examples of agricultural-related mobile source vehicles/engines include farm tractors and self-propelled harvesting equipment. Agricultural equipment such as irrigation, sprinkler, or fertigation systems would not be considered mobile source vehicles/engines. Under CPRG, examples of industrial mobile source vehicles/engines include forklifts, skid steers, off-road dump trucks, and road paving equipment. Industrial equipment such as balers, conveyors, sorters, and refining/processing equipment would not be considered mobile source vehicles/engines.

Section 4: IMPLEMENTATION (COMPLIANCE AND ENFORCEMENT)

1. Who is responsible for BABA compliance and enforcement?

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

Manufacturers have 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 grantee's (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 provided by manufacturers to ensure it demonstrates proof of compliance. Best practices 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 phase.

The funding authority is responsible for providing oversight and guidance as needed to ensure the proper implementation of BABA 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 include BABA requirements. The general provisions of 2 CFR Part 200 determine the responsible party for the grant funding authority. EPA is the funding authority for the CPRG program.

At all levels, where fraud, waste, abuse, or any violation of the law is suspected, EPA's Office of Inspector General (OIG) should be contacted immediately. The 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.

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 once products are incorporated into the project (i.e., used)?

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 manufacture or an appropriate waiver, should accompany a product prior to its "use," in accordance with Section 70914(a) of IIJA. The collection of compliance records by the grant recipient 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 to ensuring all parties involved are informed of the requirements for the project before construction is underway.

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

See Appendix 1 of this document, which includes suggested language for construction contracts to address BABA requirements. In addition to the language suggested in Appendix 1, 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 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 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.

All federal financial assistance agreements subject to BABA must have a clause requiring compliance with the requirements. See Appendix 2 of this document for example assistance agreement language.

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

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 can be made available to the funding authority upon request. The documentation may be received and maintained in hard copy or electronically or could be embedded in construction management software. The use of a signed certification letter from the 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; however, other forms of documentation are also acceptable as long as collectively, the following can be demonstrated:

1. Documentation 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 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 includes 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. For iron and steel items under BABA, references to the American Iron and Steel (AIS) requirements are also acceptable and reciprocal with BABA for such items.

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 as outlined in Section 3.)*

5. Signature of company representative on company letterhead (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 at the project site, especially for iron and steel products which are often stamped with the country of origin.

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

EPA does not require a specified format for tracking or documenting compliance. Assistance recipients are free to develop any system (from simple to complex software) for tracking items used on the project

and the accompanying compliance documentation, e.g., certification letters or applicable waivers, if doing so 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.

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

With the exception of the AIS requirements – which EPA interprets to be equivalent to the "iron and steel" requirements under BABA – EPA does not have an interpretation about the comparability of other domestic preference requirements relative to BABA. Any products that are to be certified as compliant with BABA should include a specific reference to the BABA requirements and appropriate attestation from a responsible manufacturing company official.

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

EPA recognizes that the 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 or thousands. EPA recommends that assistance recipients planning projects with a high number of potentially covered products meet with their EPA project officer 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.

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

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 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.

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

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 product, as long as the certifying official is willing to attest to the product's compliance with BABA requirements at all stages of manufacturing.

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

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.

11. Can a manufacturer use a fillable certification letter for products?

EPA recommends that certifications be signed by representatives of the manufacturing entity. 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.

12. Are product certifications from suppliers and distributors allowed?

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.

13. How long should assistance recipients keep compliance documentation?

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. Often, records must be kept for at least 3 years after project closeout.

Section 5: IMPLEMENTATION (WAIVERS)

1. Are federal agencies able to waive BABA requirements?

EPA is committed to implementing BABA requirements. OMB's guidance in M-24-02 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").

2. Are there waivers that might apply to my project?

There are agency-wide, program-wide, product-specific, and project-specific waivers. EPA has issued several agency-wide waivers that may be applicable to certain projects funded by CPRG. The information below is subject to change and will be updated as additional waivers are developed. Recipients are encouraged to review the EPA BABA website for the latest information: EPA Build America, Buy America (BABA) | US EPA. Current agency-wide waivers as of the date of these implementation procedures are provided in Appendix 7 of this document.

3. What should I do if my project is covered by a program-wide or agency-wide waiver? Do I need to maintain documentation?

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 project officer and the recipient will retain that communication with their records.

For example, a recipient may seek to apply the small project waiver where the federal financial assistance award, subaward, or participant support costs under the assistant agreement is less than $250,000. The recipient would send an email to the project officer citing the award amount as their rationale. The project officer would respond that they agree the small project waiver applies to this award. Recipient and project officer retain this communication within their grant files.

(*Note: Subaward and loan recipients, including coalition members, should work with the primary grant recipient. The primary recipient will work with EPA to determine the applicability of waivers. Subaward or loan recipients, including coalition members, should also retain communications for their records.)*

4. Who may apply for a waiver and how do you apply?

Assistance recipients and their authorized representatives may apply for a project-specific waiver. EPA does not accept waiver requests from suppliers, distributors, or manufacturers unless the assistance recipient endorses and submits the request on its own behalf. In the case where multiple programs are providing federal funds to a project, the assistance recipient should submit the waiver request to the cognizant program, which is the one providing the greatest amount of federal funds for the project. See Appendix 3 of this document for detailed steps.

Project-specific waiver requests should generally include: (1) a brief summary of the project, (2) a description and explanation of the need for the waiver for the product(s) in question, (3) a brief summary of the due diligence conducted in search of domestic alternatives (which could include correspondence between assistance recipient and supplier/distributors), (4) the quantity and materials

of the product(s) in question, (5) all engineering specifications and project design considerations relevant to the product(s) in question, (6) the approximate unit cost of items (both foreign and domestic) in addition to an estimated cost of the materials and overall project, (7) the date any products will be needed on site in order to avoid significant project schedule disruptions, and (8) any other pertinent information relevant to EPA's consideration of the waiver (e.g., the date the plans and specifications were submitted to the state, the date of construction initiation, expected date of project completion, any special considerations such as local zoning and building ordinances, seismic requirements, or noise or odor control requirements).

5. If a product is not readily available domestically, will EPA provide product waivers?

EPA will address the unavailability of domestic products through the waiver process, including project-level and potential national short-term waivers for specific products, 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 waivers, as prescribed in OMB Guidance M-24-02. EPA will follow its robust and thorough product market research processes to identify and verify domestic nonavailability for those products for which proposed national/general applicability waivers may be appropriate.

6. 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 unreasonable costs?

If the cost of compliance with BABA will increase the overall project cost by more than 25 percent, a recipient may seek a project-level "unreasonable cost waiver." As part of the waiver request, the assistance recipient must demonstrate that compliance with the BABA requirements will increase the overall project cost more than 25 percent. Depending on the circumstances of the overall project 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.

7. 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?

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 documentation.

8. 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)?

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.

9. How can assistance recipients and construction contractors address product delivery delays?

Assistance recipients should reasonably plan for material procurement to account for known potential supply chain issues or extended lead times and should notify the funding authority well in advance of the issues so that prompt attention can be given to explore alternatives. Where extended lead times for compliant products are impacting project schedules and may significantly impact construction progress and/or timely and efficient expenditure of CPRG funding within the grant period, timely communication with the funding agency is important. For products that are unavailable within a reasonable timeframe to meet the objectives and schedule of a project, EPA may consider a non-availability waiver with adequate justification. An assistance recipient would need to apply for the waiver and, if applicable, contact the direct recipient of the EPA funding to initiate the waiver process.

Section 6: CO-FUNDING

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

Any public infrastructure project that is funded in whole or in part with federal assistance must comply with BABA requirements, unless the requirements are otherwise waived. A "project" consists of all construction necessary to complete the 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. 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.

2. How will project requirements be determined for co-funded projects subject to different programmatic or waiver conditions?

OMB Guidance M-24-02 addresses cases with project co-funding from separate federal programs. EPA would apply the guidance's "cognizant agency" determination to projects that are co-funded with different general applicability/programmatic waivers. For instance, if a project were co-funded between EPA and HUD and the majority of the federal funding for the project is from EPA, then EPA would be the "cognizant" agency for application and determination of waivers. In that case, conditions from an applicable EPA waiver would apply.

3. When a project receives funding from multiple EPA assistance programs, how will the agency determine which waivers apply?

Generally, EPA will apply the "cognizant agency" approach to the relevant EPA programs that contribute funding to the project. Recognizing that funding from multiple EPA assistance programs may come at varying timelines for a project, EPA will use its discretion with respect to applicable waivers to ensure consistency in BABA implementation without unnecessary disruption to a project. For example, if a project is already operating under a waiver and receives additional funding from another EPA program, without a similar waiver, the original waiver will continue to apply to the project.

4. When a project receives funding from Federal assistance programs in multiple agencies (e.g., EPA and USDA; EPA, FEMA, and DOT), how will potentially different waivers be implemented?

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 program when other federal programs are also funding or will fund the project so that EPA can coordinate with those co-funding agencies and determine the optimal implementation approach for the waivers without unnecessary disruption to the project.

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

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. 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 in which 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.

6. When does the Cognizant Agency concept apply to waivers?

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).

Section 7: MISCELLANEOUS

1. How do international trade agreements affect the implementation of the BABA requirements?

BABA requirements apply in a manner consistent with the 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 municipality, that municipality 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.

APPENDIX 1: 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 Contactor 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.

APPENDIX 2: EXAMPLE ASSISTANCE AGREEMENT LANGUAGE FOR BABA

ALL FEDERAL FINANCIAL INFRASTRUCTURE ASSISTANCE AGREEMENTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE BABA REQUIREMENTS. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN AN ASSISTANCE AGREEMENT (E.G., SRF LOAN AGREEMENT). EPA MAKES NO CLAIMS REGARDING THE LEGAL SUFFICIENCY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the assistance received (including those imposed by the Infrastructure Investment and Jobs Act ("IIJA"), Public Law No. 117-58) which the Participant understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States ("Build America, Buy America Requirements") unless (i) the Participant has requested and obtained a waiver from the cognizant Agency pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (ii) all of the contributing Agencies have otherwise advised the Participant in writing that the Build America, Buy America Requirements are not applicable to the Project.

Comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the funding authority (such as EPA and/or a state), such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of the assistance agreement in advance of the maturity of the Bonds, termination and/or repayment of grants, cooperative agreements, direct assistance or other types of financial assistance, and/or other remedial actions.

APPENDIX 3: BABA APPLICABILITY FOR EXAMPLE PROJECTS

1) A county receives a grant to build an organic waste processing facility. The project will include the purchase of the processing equipment(cost of $1,000,000) and the construction of a structure to house the equipment ($500,000). The new equipment will be used by the county contractors that are hired to collect the community's organic waste.

a. Does the project involve construction, alteration, or repair of a building or real property? *Yes, the county is constructing a building.*

b. Does the project involve leaving iron, steel, manufactured goods or construction materials permanently affixed to the property? *Yes, the county is using construction materials (and probably steel) at a minimum. It is also purchasing a "manufactured item" (the equipment) that will be permanently affixed to the land (it is not a mobile piece of equipment).*

c. Is the project publicly owned or serve a public function? *Yes, the project is both publicly owned and will serve a public function by processing organic waste for the community.*

Based on the information presented in Example 1, it appears that this project would need to comply with BABA.

2) A private company gets a subgrant from a municipality (the municipality received a grant from EPA) and the company will be using that grant to buy a sorter ($500,000) and construct a facility to house the sorter ($100,000). The private company will be collecting recyclables from industry clients and then reselling those sorted products. The facility is not open for public use.

a. Does the project involve construction, alteration, or repair of a building or real property? *Yes*

b. Does the project involve leaving iron, steel, manufactured goods or construction materials permanently affixed to the property? *Yes*

c. Is the project publicly owned or serve a public function? *No, the project is privately-owned and not open to the public.*

Based on the information presented in Example 2, it appears that this project would not need to comply with BABA.

3) A Tribe receives a grant for $500,000: $100,000 is for overhead costs (e.g., salaries) and $400,000 will be used to hire a contractor to conduct energy audits, replace light fixtures from the interior and exterior of a community center, insulate the ceilings/floor, and replace the windows. The contractor is donating their labor costs.

a. Does this project involve the construction, alteration or repair of a building or real property? *Yes*

b. Does this project involve leaving iron, steel, manufactured goods, or construction materials permanently affixed to the property? *Yes, windows would be manufactured goods and assuming there would be drywall, nails, and other construction materials affixed.*

c. Is this project publicly owned or serve a public function? *Yes, it is a Tribal community center for use by the Tribal members/public.*

Based on the information presented in Example 3, it appears that this project would need to comply with BABA.

4) A city receives a subaward to excavate and haul away contaminated soil from a brownfield site. The subaward is for $3 million. Once the soil is removed, the city will subsequently contract to restore the site to native meadow and pollinator habitat at an anticipated cost of another $2 million.

a. Does this project involve the construction, alteration or repair of a building or real property? *Yes, removing soil from land.*
b. Does this project involve leaving iron, steel, manufactured goods or construction materials permanently affixed to the land? *No. The city "project" (using purpose, time, and place analysis noted in these FAQs) is for the soil removal only.*

Based on the information presented in Example 4, it appears that this project would not need to comply with BABA.

(Note: If the meadow/habitat portion of the project is intended to be open to the public, it may be considered infrastructure under the "public function" test. If, at the time of award, the site was determined to be a private site and there was no clear public use or access, this would not trigger BABA requirements.)

APPENDIX 4: PRODUCTS LIKELY MADE "PRIMARILY" OF IRON AND STEEL TO BE 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

APPENDIX 5: PRODUCTS LIKELY MADE "PRIMARILY" OF IRON AND STEEL TO BE 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		

APPENDIX 6: WAIVER REQUEST PROCESS

The framework described below establishes the process for an assistance recipient to request waivers of the BABA requirements directly to EPA for CPRG. Pursuant to BABA, EPA has the responsibility to make findings as to the issuance of waivers to the BABA requirements. Subaward recipients must work through the direct recipient of EPA financial assistance prior to requesting a waiver.

Waiver Process:

The waiver process begins with the assistance recipient (this may be the subaward recipient). To fulfill the BABA requirements, the assistance recipient (or subaward recipient) 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 in any documentation of project deals, terms for subawards, request for proposals, or solicitations for bids, and in all contracts (see Appendix 2 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of the three statutory conditions, as defined in 2 CFR 184.7, is sufficiently demonstrated to EPA.

To apply for a project-specific waiver:

- The assistance recipient should email their EPA project officer and alert them to the planned waiver request and copy BABA-CPRG@epa.gov. The assistance recipient may submit a draft waiver request to the project officer at this point or simply indicate one is forthcoming.
- Once CPRG determines that sufficient documentation and rationale exists for the waiver, the recipient will email the updated request in the form of a Word document (.docx) or editable PDF (.pdf) to BABA-CPRG@EPA.gov, and evaluation by EPA will commence.

It is strongly recommended that each primary financial assistance recipient identify a person or persons for BABA communications. For subawards, the primary financial assistance recipient will review the application for the waiver and determine whether the necessary information has been included.

(*Note: More information may be provided in the future regarding what information is required to be included in waiver requests*).

Evaluation by EPA:

After receiving an application for waiver of the BABA requirements and ensuring sufficient information was provided, EPA will initiate market research. If no domestic product is identified, EPA will then publish the request on its website for at least 15 days for public comment. After reviewing public comment, EPA will determine in consultation with the Made-in-America Office whether the application properly and adequately documents and justifies the statutory basis cited for the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the designee whether a waiver request has been approved or not approved as soon as such a decision has been made.

Granting such a waiver is a four-step process:

- Research – After receiving an application for a waiver, EPA will perform market research to determine whether the iron, steel, manufactured goods, or construction materials are available domestically.

- Posting – After research, if sufficient domestic products have not been identified, EPA is required to publish the application and all material submitted with the application on EPA's website for at least 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: https://www.epa.gov/cwsrf/build-america-buy-america-baba-waivers-open-public-comment
- Evaluation – After receiving an application for waiver of the BABA requirements, EPA will determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver to determine whether or not to grant the waiver.
- Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the assistance recipient and post the signed waiver on the Agency's website. The assistance recipient should keep a copy of the signed waiver in its project files.

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

APPENDIX 7: APPROVED EPA AGENCY-WIDE BABA WAIVERS

This list is current as of the publishing date of this document. 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 Projects Waiver***
  - If the federal financial assistance award, subaward, or participant support costs under assistant agreements are less than $250,000, the project may qualify for a Small Project Waiver.
  - 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 infrastructure project purchases 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 Waiver***
  - Recipients in the Pacific Island territories of Guam, American Samoa, and Northern Mariana Islands may waive all requirements of BABA, excluding equipment for telecommunications infrastructure, broadband connectivity, energy generation and stationary storage larger than 5MW, and cargo handling.
  - 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 Waiver***
  - Awards and subawards to Tribes at or below $2.5 million may be exempt from BABA requirements, and all Tribes may purchase non-compliant manufactured products before September 30, 2026.
  - Applicability dates: January 10, 2025 to January 9, 2030
  - https://www.epa.gov/system/files/documents/2025-01/multi-agency-tribal-public-interest-waiver-final.pdf
- ***Partial Nonavailability Waiver: Domestically Assembled Solar Photovoltaic Panels***
  - This waives the 55% domestic content requirement for new solar modules if (1) final assembly occurs in the U.S. and (2) modules are installed by June 30, 2026.
  - Applicability dates: January 10, 2025 to December 31, 2025.
  - https://www.epa.gov/system/files/documents/2025-01/epa-solar-waiver-oar.pdf