

## Build America, Buy America Act (BABA) FAQs for Manufacturers

U.S. Environmental Protection Agency

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The purpose of this document is to assist product manufacturers, suppliers, and distributors with understanding the Build America, Buy America Act (BABA)<sup>1</sup> requirements. This document consists of a series of frequently asked questions (FAQs) with responses based on Office of Management and Budget (OMB) guidance<sup>2,3</sup>, U.S. Environmental Protection Agency (EPA) implementation procedures,<sup>4</sup> and other resources. This document does not address domestic sourcing requirements associated with federal procurement or financial assistance from other federal agencies.<sup>5</sup> For current information on BABA implementation at the EPA, visit the [EPA's BABA website](#).

### Q1. Does my product need to meet the BABA requirements?

Your product needs to meet the BABA requirements for being considered “produced in the United States” if it is an iron or steel product, construction material, or manufactured product, and you want to supply it to infrastructure projects receiving any form of federal financial assistance (e.g., grants, loans, cooperative agreements, and rebates). See Q2-Q7 to understand if your product is considered an iron or steel product, construction material, or manufactured product and what “produced in the United States” means for each of these product categories.

Infrastructure projects are defined very broadly to include any activity related to the construction, alteration, maintenance, or repair of any structures, facilities, or equipment that serve a public function. Infrastructure projects include but are not limited to 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 (except for private homes for personal use); and energy generation, transportation, and distribution including electric vehicle charging. In addition, a project serves a public function if it is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation. [More than 70 EPA programs](#) fund infrastructure projects that can only use iron or steel products, construction materials, or manufactured products that are “produced in the United States.”

Your product may NOT need to meet the BABA requirements if any of the following are true:

- Your product is not directly incorporated into a federally funded infrastructure project (e.g., your product is a component or subcomponent of another product).
- Your product is brought to the project site and removed at or before the completion of the infrastructure project (e.g., temporary scaffolding).

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

<sup>2</sup> [2 CFR 184](#). Buy America Preferences for Infrastructure Projects.

<sup>3</sup> [M-24-02](#). Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

<sup>4</sup> [Build America, Buy America \(BABA\) EPA Programs](#).

<sup>5</sup> See [MadeinAmerica.gov](#) for information on BABA implementation at other agencies.

- Your product is equipment or furnishing that is used at or within the finished infrastructure project but is not an integral part of the project (e.g., movable chair, desk, portable computer equipment).
- Your product is vegetation, biodegradable materials, or soil.
- Your product is a cement or cementitious material, aggregate (e.g., stone, sand, gravel), or aggregate binding agent or additive unless it has been combined with other materials and processed into a specific form and shape (e.g., precast concrete).
- The EPA has approved a waiver that applies to your product or to the project to which you are supplying your product. See Q12 for more information on waivers.

## **Q2. Is my product considered an iron or steel product?**

For BABA purposes, your product is considered an iron or steel product if it consists wholly or predominantly of iron or steel or a combination of both. This means that the cost of the iron and steel content exceeds 50 percent of the total cost of all components. The cost of iron and steel is the cost of the iron or steel mill products (e.g., 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. Components are items incorporated directly into an iron or steel product. Additional products may qualify as an iron or steel product if they are being supplied to water infrastructure projects that must comply with the American Iron and Steel (AIS) requirements.<sup>6</sup>

## **Q3. What does it mean to be “produced in the United States” for iron or steel products?**

For BABA purposes, iron or steel products are considered “produced in the United States” if all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. If an iron or steel product was manufactured by re-heating imported ferrous sources such as billets or ingots, it is not considered “produced in the United States.” The [EPA’s Minor \(Ferrous\) Components Waiver](#) allows up to five percent of the total material cost of an iron or steel product to include miscellaneous minor iron or steel components that are nondomestic or of unknown origin.

## **Q4. Is my product considered a construction material?**

For BABA purposes, your product is considered a construction material if it consists of only one of the following items: non-ferrous metals; plastic and polymer-based products (e.g., 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; and drywall. Minor additions to a construction material, including binding agents or additions described in the standard for that construction material (see Q5) do not change its categorization as a construction material. If your product combines more than one of the listed construction materials or combines one of the listed construction materials with other materials, then it is considered a manufactured product for BABA purposes.

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<sup>6</sup> See the [EPA’s AIS website](#) for more information on AIS implementation at the EPA.

#### **Q5. What does it mean to be “produced in the United States” for construction materials?**

For BABA purposes, construction materials are considered “produced in the United States” if all manufacturing process occurred in the United States. The following list includes each construction material followed by a standard for the material to be considered “produced in the United States.”

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

#### **Q6. Is my product considered a manufactured product?**

For BABA purposes, your product is considered a manufactured product if it does not meet the definition of an iron or steel product (see Q2) or a construction material (see Q4) and is not an exempted material (see Q1). Manufactured products are defined as articles, materials, or supplies that have been processed into a specific form and shape or have been combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

#### **Q7. What does it mean to be “produced in the United States” for manufactured products?**

For BABA purposes, manufactured products are considered “produced in the United States” if the final product was manufactured in the United States and components of domestic origin constitute greater than 55 percent of the total cost of all components. Components are items incorporated directly into the final manufactured product. The cost of a component includes transportation costs, any applicable duties, and allocable overhead costs. The cost of a component does NOT include any costs associated with manufacture of the final manufactured product. More information on determining the cost of components for manufactured products can be found in OMB’s guidance at [2 CFR 184.5](#).

**Q8. How do I demonstrate that my product meets the BABA requirements?**

To demonstrate that your product meets the BABA requirements, the product manufacturer should provide a self-certification letter attesting that the product(s) supplied to the infrastructure project meet the BABA requirements. The entity receiving the federal financial assistance is ultimately responsible for ensuring BABA compliance and must collect and maintain compliance documentation such as these self-certification letters for all products that are incorporated into their infrastructure project. They may work through a contractor to collect manufacturer self-certification letters. See Q9 for more information on what should be included in manufacturer self-certification letters.

**Q9. What should be included in a manufacturer self-certification letter?**

Manufacturer self-certification letters should be product-specific and project-specific. They should identify the project by name, location, and/or contract/project number and identify the product(s) actually supplied to the project. They should also contain a statement attesting that the product(s) meet the BABA requirements for the specific product category (i.e., iron or steel products, construction materials, manufactured products), and the location(s) of manufacturing (city and state). Finally, the letter should be on company letterhead and signed by a qualified manufacturer representative. To view manufacturer self-certification letter templates, visit the resources page of the [EPA's BABA website](#).

**Q10. Does the EPA certify products or manage a list of products that meet the BABA requirements?**

The EPA does not certify products that meet the BABA requirements. The EPA relies on a system of manufacturer self-certification letters described in Q8 and Q9.

The EPA does not manage a list of products that meet the BABA requirements. Products that meet the BABA requirements should be identified as such on your website and/or in your sales materials. These products may be more readily considered for incorporation into infrastructure projects receiving federal financial assistance.

**Q11. What if my product is shipped as a kit?**

For BABA purposes, if your product is considered a manufactured product but is brought to the project site as separate components intended for final assembly or installation onsite, it can still be treated and evaluated as a single manufactured product. Delivering the product as a kit rather than a fully assembled product must be standard business practice in the industry and you must be meaningfully involved in the manufacturing process of a component of the kit. This treatment is limited to discrete products that perform a unified function and does not apply to more wide-ranging systems of interconnected products (e.g., heating, ventilation, and air conditions systems for an entire building). When calculating the cost of components for a product shipped as a kit, do not include the cost of transportation to the project site.

### **Q12. Can I obtain a waiver if my product does not meet the BABA requirements?**

The EPA does not have the authority to waive the BABA requirements for individual manufacturers. The EPA only has authority to waive the BABA requirements for certain products or projects if: (1) applying the BABA requirements would be inconsistent with public interest; (2) products that meet the BABA requirements are not available in sufficient and reasonably available quantities or of a satisfactory quality; or (3) the inclusion of products that meet the BABA requirements will increase the cost of the overall infrastructure project by more than 25 percent.

The EPA only accepts project-specific waiver requests if they are submitted by the entity receiving the federal financial assistance (or their authorized representative) and only after the entity has conducted market research to justify the need for the waiver. The EPA does not accept waiver requests submitted by product manufacturers, suppliers, or distributors. Project-specific waivers do not waive the BABA requirements for other EPA-funded projects. Similarly, waivers issued by other federal agencies do not waive the BABA requirements for EPA-funded projects.<sup>7</sup>

The EPA has program-wide and agency-wide waivers that may apply to your product or to the project to which you are supplying your product (e.g., the [EPA's De Minimis Waiver](#)). If you believe this is the case, the entity receiving the EPA's federal financial assistance should contact their project officer and provide a rationale for applying the waiver. Note that waivers have specific applicability conditions and other requirements, which must be followed.

To view a list of the EPA's approved general applicability and project-specific waivers, visit the approved waivers page of the [EPA's BABA website](#).

### **Q13. What if my product does not meet the BABA requirements and is not covered by a waiver?**

If your product does not meet the BABA requirements and is not covered by a waiver, it cannot be incorporated into infrastructure projects receiving federal financial assistance. If the EPA finds that a manufacturer has knowingly misrepresented their product's adherence to the BABA requirements in a self-certification letter, the case would be referred to the EPA's Office of Inspector General (OIG), who may pursue civil or criminal penalties.

At all levels where fraud, waste, abuse, or any violation of the law is suspected, the EPA's OIG should be contacted immediately. The EPA's OIG can be reached at 1-888-546-8740 or [OIG\\_Hotline@epa.gov](mailto:OIG_Hotline@epa.gov). For more information, visit the [EPA's OIG website](#).

### **Q14. Where can I find more information on BABA implementation at the EPA?**

For more information on BABA implementation at the EPA, please visit the [EPA's BABA website](#), which includes links to relevant OMB guidance (e.g., [2 CFR 184](#) and [M-24-02](#)), manufacturer self-

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<sup>7</sup> See [MadeinAmerica.gov](#) to view a list BABA waivers issued by other federal agencies.

certification letter templates, approved waivers, waivers open for public comment, and program-specific implementation procedures.

**Q15. Who can I contact for more information on BABA?**

For general questions, please email [EPA\\_BABA\\_Waiver@epa.gov](mailto:EPA_BABA_Waiver@epa.gov). If the question is regarding a specific project or program, please email the EPA office funding the project:

- For the Office of Water (OW), please email [BABA-OW@epa.gov](mailto:BABA-OW@epa.gov)
- For the Office of Land and Emergency Management (OLEM), please email [BABA-OLEM@epa.gov](mailto:BABA-OLEM@epa.gov)
- For the Office of Research and Development (ORD), please email [BABA-ORD@epa.gov](mailto:BABA-ORD@epa.gov)
- For the Office of Transportation and Air Quality (OTAQ), please email [BABA-OTAQ@epa.gov](mailto:BABA-OTAQ@epa.gov)
- For the Climate Pollution Reduction Grants, please email [BABA-CPRG@epa.gov](mailto:BABA-CPRG@epa.gov)
- For the Office of International and Tribal Affairs (OITA), please email [GAP@epa.gov](mailto:GAP@epa.gov)
- For the Greenhouse Gas Reduction Fund (GGRF), please contact [BABA-GGRF@epa.gov](mailto:BABA-GGRF@epa.gov)