



USDA’s Implementation of the Build America, Buy America Act

This document is designed to assist United States Department of Agriculture (USDA) award recipients by providing important information related to the Build America, Buy America (BABA) Act provisions of the [Bipartisan Infrastructure Law](#) (Pub. L. 117-58), where federal funding supports a project for infrastructure as defined at Section 70912 of the BABA Act.

Requirements

The following information provides details on the requirements of the BABA Act and standards provided by [2 CFR part 184](#), as supplemented by the White House Office of Management and Budget (OMB) Memorandum [M-24-02](#), “Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.”

1. No USDA funds made available for a federal award for an infrastructure project may be obligated unless:
 - A. All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - B. 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; and
 - C. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.
2. The Buy America Preference only applies 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 a Buy America Preference 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 an integral part of the structure or permanently affixed to the infrastructure project.
3. Per [2 CFR 184.2\(b\)](#), the effective date of 2 CFR part 184 is October 23, 2023, and applies to Federal

awards obligated on or after its effective date. Awards obligated on or after May 14, 2022, the effective date of the BABA Act, and before October 23, 2023, are instead subject to OMB Memorandum [M-22-11](#), “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.”

4. While M-24-02 rescinded M-22-11, per [2 CFR 184.2\(c\)](#), if an infrastructure project that has previously received a Federal award obligated on or after May 14, 2022, but before October 23, 2023 receives an additional Federal award obligated within one year of October 23, 2023, the additional Federal award is subject to M-22-11. However, if significant design or planning changes are made to the infrastructure project, the Federal awarding agency may apply 2 CFR part 184 to the additional Federal award. Federal awards for an infrastructure project obligated after one year from October 23, 2023, are subject to 2 CFR part 184, regardless of whether 2 CFR part 184 applied to previous awards for the project.

Exceptions

The following information provides details on the exceptions to the BABA Act and M-24-02.

1. When necessary, award recipients may apply for, and USDA agency or staff office administrative level may approve, a waiver from these requirements. The USDA agency or staff office may waive the application of the domestic content procurement preference in any case in which it determines that one of the following exceptions applies:
 - A. **Public interest:** Applying the domestic content procurement preference would be inconsistent with the public interest.
 - B. **Nonavailability:** The 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; or
 - C. **Unreasonable cost:** The inclusion of iron, steel, manufactured products or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.
2. This guidance does not apply to “expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 16 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.”¹

“[P]re and post disaster or emergency response expenditures” consist of expenditures for financial

¹ Pub. L. 117-58 § 70912(4)(B).

assistance that are (1) authorized by statutes other than the Stafford Act,² and (2) made in anticipation of or response to an event or events that qualify as an “emergency” or “major disaster” within the meaning of the Stafford Act.³

Awards made to support the construction or improvement of infrastructure to mitigate the damage that may be caused by a non-imminent future emergency or disaster, such as awards made under FEMA’s Flood Mitigation Assistance program,⁴ do not qualify as “pre and post disaster or emergency response expenditures.”

3. Unless required by statute, USDA does not apply BABA requirements to for-profit prime recipients.
4. For instructions on how to submit a USDA BABA waiver, please refer to the following guidance provided on the USDA OCFO *Build America, Buy America Act (BABA) Act* [webpage](#):
 - Guidance on USDA Waiver Review Process for USDA Agencies and Staff Offices
 - Guidance for Submission of a USDA Waiver Request by Recipients and Subrecipients

Applicability

New USDA financial assistance awards and funding amendments to existing awards must contain the full term found in Appendix I of M-24-02.

Definitions

Definitions for key terms are found at 2 CFR part 184 and in M-24-02. The following information provides an overview of major definitions used in the BABA Act and M-24-02.

“Buy America Preference” means the “domestic content procurement preference” set forth in section 70914 of the BABA Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

Construction materials means articles, materials, or supplies that consist of only one of the items listed in paragraph 1 of this definition, except as provided in paragraph 2 of this definition. To the extent one of the items listed in paragraph 1 contains as inputs other items listed in paragraph 1, it is nonetheless a construction material.

1. The listed items are:

² 42 U.S.C. §§ 5121 et seq.

³ 42 U.S.C. §§ 5122(1), (2).

⁴ See 42 U.S.C. § 4104c.

- a. Non-ferrous metals;
- b. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- c. Glass (including optic glass);
- d. Fiber optic cable (including drop cable);
- e. Optical fiber;
- f. Lumber;
- g. Engineered wood; and,
- h. Drywall.

2. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

To provide clarity to item, product, and material manufacturers and processors, we note that items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

Federal financial assistance, as provided at [2 CFR 200.1](#), means assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans, loan guarantees, and other types of financial assistance.

Non-Federal entity, as provided at [2 CFR 200.1](#), means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. Non-federal entity does not include for-profit entities.

Infrastructure means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for 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; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

Infrastructure project means 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.



Produced in the United States means:

1. In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. In the case of manufactured products:
 - a. The manufactured product was manufactured in the United States; and
 - b. 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 that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product.
 - c. In the case of construction materials, all manufacturing processes for the construction material occurred in the United States.

Additional Information

USDA award recipients should contact their funding agency for any questions about BABA applicability. For questions about this document, please contact FFAC@usda.gov.

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