



Build America, Buy America Act

The Build America, Buy America (BABA) Act states that no funds made available for a federal financial assistance program (e.g., grants, loans) for infrastructure may be obligated unless all the **iron, steel, manufactured products, and construction materials** used in the project are produced in the United States. This fact sheet provides a simple overview of the BABA Act and how it may relate to current or future water infrastructure projects.*

WHAT DOES THIS MEAN?

If your client would like to be eligible for federal assistance, construction specifications may need to include BABA provisions. All purchased materials must be manufactured in the United States which includes everything but ready-mix concrete and aggregate. For manufactured products, more than 55 percent of the total cost of all components of the manufactured product must be produced in the United States to be considered “Made in America” (manufacturers must provide a certification).

There are some exceptions to the BABA Act:

- Actions/work in response to major declared disasters via the Stafford Act
- Projects, equipment, or scenarios for which waivers are granted. Waivers are only valid for a defined period of time (e.g., 6 months, 5 years). Allowed waivers include:
 - When applying, BABA is inconsistent with the **Public Interest** - there are many implementation period waivers available from federal agencies under this category (applicability varies by agency)
 - When items are **Not Available** in the United States with reasonable certainty or quality
 - When the cost due to the BABA Act increases the cost of a project by 25 percent or more (i.e., **Unreasonable Cost**).

*Infrastructure is broadly defined by OMB M 22-11 to include water, electrical, transportation, broadband, buildings and real property.



WAIVER PROCESS

All waivers for federal agencies are managed through a single portal: [Made in America](#). Here you can find approved and pending waivers, which are issued programmatically or for a specific product or product type.

Programmatic (i.e., Public Interest)

Programmatic waivers are issued by each funding agency (e.g., Environmental Protection Agency, Federal Emergency Management Agency), which can be found through agency specific links on the Made in America portal. If a project receives federal funding from two separate programs, the criteria of the program contributing the greatest amount of funding applies.

Some programmatic waivers for the Environmental Protection Agency include:

- **De Minimis Waiver (valid through October 2027):** If products used in and incorporated into a project cumulatively comprise no more than five percent of the total project cost.
- **Adjustment Period Waiver:** For eligible projects of prospective borrowers that initiated project design plans (e.g., preliminary engineering reports, basis of design reports, and technical design) prior to May 14, 2022.
- **Small Project (valid through Sept 2027):** waiver for small projects, where assistance agreements or subawards under assistance agreements are less than \$250,000.

Specific (i.e., Unreasonable Cost and Nonavailability)

You can view and search for waivers that have been submitted here: [BABA waivers](#). Currently, there are hundreds of items submitted for review and waiver request due to cost or nonavailability. Waiver review timelines vary by agency, and some have reported up to 1 year. Nonavailability waiver requests generally should include due diligence on the availability of products that could meet performance-based specifications.

COST IMPLICATIONS

BABA Act compliance will increase the cost of construction, both through material costs as well as oversight and documentation during the construction procurement phase. HDR's cost estimators anticipate an increase in total construction costs from 4 to 5 percent to meet the BABA Act provisions.

RECOMMENDATIONS

1. Be aware of cost considerations as you work on planning and estimating projects. Reach out to HDR's cost estimators for questions and guidance. They can offer cost considerations and impacts of the BABA Act as well as how to estimate the net cost, given lower interest rates of federal loans.
2. Factor in equipment and material availability into overall construction schedules. Products that meet BABA Act requirements may see increased demands and longer lead times.
3. Explore BABA Act issues early during process evaluation and explore potential BABA Act waivers as soon as possible to inform subsequent design development.
4. Be sure to include BABA Act requirements in specifications when appropriate. Engage clients regarding the BABA Act to confirm federal assistance potential. And, reach out to HDR's [Master Specifications](#) for additional support.

Questions? Please contact:



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