



## BEAD Program Technical Assistance Resource

# Build America, Buy America (BABA) Guide

### Resource Version:

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### Resource Details:

Category	Allowable Costs, Match, Cost Evidencing
Summary	This guide highlights the major requirements and existing waivers of Build America, Buy America (BABA) and how they may apply to Wisconsin BEAD projects. Subrecipients can use this guide to generally familiarize themselves with BABA and how the Wisconsin Broadband Office (WBO) intends to monitor their compliance.
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Disclaimer: This document is intended solely to assist subrecipient in better understanding the Wisconsin BEAD Program and associated policies/processes. This document does not supersede, modify, or otherwise alter applicable statutory or regulatory requirements, the terms and conditions of the award, or the Grant Agreement. In all cases, statutory and regulatory mandates, the terms and conditions of the award, and NTIA policies and guidance shall prevail over any inconsistencies contained in this document.

## What is BABA?

The Build America, Buy America Act (BABA) was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, 135 Stat. 429, 70901-70927. BABA established domestic content procurement preference requirements for federal financial assistance projects for infrastructure, including the BEAD Program, consistent with Section 70912(2) of the Infrastructure Act.

As outlined in Section 3.0 of the BEAD Grant Agreements, subrecipients are required to comply with BABA requirements.

**BABA requires that all iron, steel, manufactured products<sup>1</sup>, and construction materials<sup>2</sup> used in a federally funded infrastructure project are produced in the United States<sup>3</sup>. This applies to any construction, alteration, or repair of broadband infrastructure under the BEAD Program (unless waived as described below).**

- **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.
- **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.
- **All construction materials** are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States. See the BEAD waivers and 2 CFR § 184.6 for more information on the meaning of “all manufacturing processes” for specific construction materials.

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<sup>1</sup> See [2 CFR § 184.3](#) for the definition of a manufactured product.

<sup>2</sup> See [2 CFR § 184.3](#) for the definition of construction materials.

<sup>3</sup> See [2 CFR § 184.3](#) for definition of “Produced in the United States”.

## BABA Waivers

Two waivers have been issued regarding BABA that impact the BEAD Program: The Limited General Applicability Nonavailability Waiver and The Department of Commerce Department-Wide Public Interest Waivers for De Minimis Infrastructure Project Purchases, Small Grants, and Minor Components.

### Waiver 1: Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference

This waiver addresses iron, steel, manufactured products, and construction materials related to BEAD. Below is simplified overview of how the waiver impacts each of these items. Make sure to review the waiver itself for more in-depth descriptions of the requirements.

- **Construction Materials:**

- Waived:

- Non-optic glass inputs used to manufacture fiber and fiber optic cable.
- Waiver also clarifies that connectors are minor additions to fiber optic cable that do not need to be manufactured nor attached in the US.

- Not Waived:

- Optic glass used in manufacturing of optical fiber and fiber optic cable - **De Minimis Waiver does NOT apply to these.**

- **Manufactured Products:**

- Electronics:

- Waived:

- All electronics

- With exception of the Partially Waived categories outlined below

- Partially Waived (and De Minimis Waiver does NOT apply):

- The following items only have the 55% cost of components requirement waived. [See guidance](#) for specific manufacturing processes that must occur in the US.
  - Optical Line Terminals (OLT) and Remote Optical Line Terminals
  - OLT Line Cards

- Optic Pluggables
- Standalone Optical Network Terminals and Optical Network Units (ONTs combined with routers are waived).
- **Enclosures:**
  - Not Waived:
    - Specific manufacturing process requirements for each type of enclosure are outlined in waiver.
    - De Minimis Waiver does NOT apply.
- **Passive Optical Equipment:**
  - Waived
- **Other Network Equipment** (i.e. conduit, mounting brackets, patch panels, etc.):
  - Not Waived, but De Minimis Waiver CAN apply.
- **Iron and Steel Products** (including radio towers):
  - Not Waived, but De Minimis Waiver CAN apply.

## **Waiver 2: Department of Commerce Department-Wide Public Interest Waivers for De Minimis Infrastructure Project Purchases, Small Grants, and Minor Components**

There are three different parts to this waiver: De Minimis Purchases, Small Grants, and Minor Components. Note, these waivers are not applicable to all items (ex. fiber cable, some electronic manufactured products, certain types of enclosures). The subrecipient should review the II.A. 1, 2, and 3 of the [Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference](#) for these specific items.

- **De Minimis:**
  - Waiver of up to 5% of total applicable project costs (material costs subject to BABA) up to a maximum of \$1,000,000. Once one of these thresholds is reached, BABA applies to all other applicable project purchases.
- **Small Grants:**

- Grant awards equal or less than the Simplified Acquisition Threshold<sup>4</sup> (which is currently \$350,000) are waived from BABA requirements.
- **Minor Components:**
  - Allows the use of non-domestically produced miscellaneous minor components comprising no more than 5% of the total material cost of an otherwise domestically produced iron and steel product.

## Reporting Use of Waived Electronics

Subgrantees will be required to report certain information on **finished waived electronics** used in BEAD deployments. Make sure that you are tracking this as you incorporate these electronics into your project. The WBO will request this document be submitted with each Semi-Annual Report.

Information required to be reported includes:

- Manufacturer
- Electronic Category
- Harmonized System (HS) Code
- Product Identifier
- Common Language Description of Product Function
- Country of Origin
- Quantity

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<sup>4</sup> [https://www.ecfr.gov/current/title-48/part-2/subpart-2.1#p-2.101\(Simplified%20acquisition%20threshold\)](https://www.ecfr.gov/current/title-48/part-2/subpart-2.1#p-2.101(Simplified%20acquisition%20threshold))

# Documenting BABA Compliance

## Two-Part Framework for BEAD BABA Compliance:

- **Self-Certification:**
  - Manufacturers can choose to certify certain equipment they produce meets the domestic manufacturing requirements described in the BEAD BABA waiver. The Department of Commerce hosts a [BEAD BABA Self-Certification list](#) of manufacturers that have completed the certification process.
  - **NOTE: A manufacturer being on this list does not mean that subrecipients do not need to collect a BABA certification letter (see below) for their materials that require domestic production.** This list is intended to assist subrecipients in finding BABA compliant manufacturers to purchase from.
- **Manufacturer's BABA Certification Letter<sup>5</sup>:**
  - BABA compliant manufacturers will furnish certification letters to BEAD subrecipients certifying that the materials meet the BABA domestic manufacturing requirements. The main elements of these letters are:
    - Reference to the BABA domestic manufacturing requirement
    - Equipment information:
      - Product Name
      - Product Description (e.g. what it is or what it does)
      - Quantity
    - Location of manufacturing
    - Signature of an authorized company representative

Subrecipients should keep track of these letters down to each individual invoice that they are associated with. The WBO will be monitoring on BABA compliance and reserves the right to ask for these letters at any time.

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<sup>5</sup> A sample letter can be found on page 15 of [Build America, Buy America Compliance and Documentation Requirements and Procedures](#)

## BABA FAQs

- **Does BABA apply to my \$0 project?**
  - No. Awards equal to or less than the Simplified Acquisition Threshold (currently \$350,000) are waived from BABA requirements via the small grants waiver.
- **Does BABA apply to LEO awards?**
  - Yes. To the extent that placing radios into a LEO system includes “any activity related to the construction, alteration, maintenance, or repair of infrastructure,” the components used in that construction/alteration would be subject to BABA, even if the electronics were waived.
- **Does BABA apply to my matching funds?**
  - Yes. The entire BEAD project must comply with BABA requirements.
- **Does BABA apply to my matching in-kind funds?**
  - Yes. Existing infrastructure used as in-kind match must comply with BABA requirements. The entire BEAD project must comply with the BABA requirements. This includes but is not limited to: purchases made with matching funds; and in-kind match contributions of construction materials and manufactured products (including materials or products used in previous construction regardless of source). See OMB M-24-02 Section IV, BABA FAQs, BEAD FAQ 4.4 for more information.
- **Does BABA apply to items that I do NOT submit for evidence of cost or match?**
  - Yes. The entire BEAD project must comply with BABA requirement.
- **Does BABA apply to tools and equipment used to perform construction activities?**
  - No. BABA only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project.
- **Does BABA apply to the materials that my contractor uses?**
  - Yes. Subrecipients are responsible for ensuring contractors are using BABA compliant materials. You are expected to retain any certification letters for these materials and track any materials that are being used under a waiver, even if they are being used by your contractor.
- **Is fiber covered by the De Minimis Waiver?**
  - No. Fiber and some other materials are not covered by the De Minimis Waiver. However, it is covered by the Small Grants Waiver.

## BABA Best Practices

- Make sure to receive and retain the manufacturer's BABA Certification Letters for all materials that BABA applies to and properly store them down to the invoice. The WBO will be monitoring these.
- Maintain written BABA compliance policies and procedures and communicate them to all parties involved in procuring for BEAD projects.
- Document BABA compliance determination for every item. If an item is clearly compliant, note why. If it's clearly exempt, note that too. Think through and document every category of material.
- When using waived materials, document good faith efforts made to use compliant materials, including any justifications for using waived materials in their place.
- Keep track of materials being used under a BABA waiver. The WBO will be monitoring this – all data should be auditable.
- Monitor BABA compliance of contractors/subrecipients.
- Review BABA policies and procedures with legal team to make sure they are in compliance.
- Do not plan to rely on the De Minimis Waiver – this is meant to be used on a *just in case* basis.
- Include Buy America Preference requirements in all solicitations, requests for proposals, agreements, sub-agreements, and similar materials.
- Maintain a list of every single item being put into the infrastructure build by project.
- Order materials early to ensure they are available within the performance period. Long wait times for BABA compliant products are expected.
- Document all decisions regarding BABA applicability to items, including any analysis/calculations on the application of waivers.

## Additional Resources:

- [Build America, Buy America Compliance and Documentation Requirements and Procedures](#)
- [Build America, Buy America Act Frequently Asked Questions \(FAQ\) Related to the Broadband Equity, Access, and Deployment \(BEAD\) Program](#)
- [CFR Part 184: PART 184—BUY AMERICA PREFERENCES FOR INFRASTRUCTURE PROJECTS](#)
- [Build America, Buy America Self-Certification List for the Broadband Equity Access and Deployment \(BEAD\) Program](#)
- [NTIA General Applicability Waiver](#)
- [DOC De Minimis Waiver](#)
- [BEAD BABA Reporting Subrecipient Tracker](#)