



Appalachian
Regional
Commission

ARC Grantee Manual

Build America, Buy America (BABA)

How to Implement the Buy America Preference in ARC Construction Grants

Appalachian Regional Commission

A quick note before you start

This manual explains, in plain language, what you must do to comply with BABA on an ARC-funded construction project. It tells you your duties, the actions that help you succeed, and where to get help.

This is a practical guide, not the law itself. It does not replace your grant terms and conditions or the official ARC BABA Guidance. If anything here seems to conflict with your grant agreement or the ARC BABA Guidance, the grant agreement and the Guidance control.

Contents

Overview	3
1. General Information.....	3
1.1 How to use this manual.....	3
1.2 When this manual applies.....	3
1.3 Application of BABA to Non-Construction Grants.....	4
1.4 Plan early (before you apply).....	5
1.5 Who administers ARC construction projects	6
1.6 Key terms.....	6
2. BABA Resources for ARC Grantees.....	7
3. Who Is Responsible for BABA.....	7
4. Building BABA Into Your Award.....	8
4.1 The required Buy America term and condition	8
4.2 Building BABA into your project, start to finish.....	9
4.3 EPC/S and project management contracts.....	12
4.4 What counts as iron and steel	12
4.5 What counts as construction materials.....	12
4.6 What counts as a manufactured product	12
4.7 International trade agreements.....	13
4.8 Disasters and emergencies.....	13
5. ARC BABA Waivers.....	14
5.1 ARC's waiver policy	14
5.2 Grounds for a waiver	14
5.3 Market research.....	15
5.4 How ARC processes a waiver request	16
5.5 After a waiver is issued: implementation and monitoring	16
5.6 Projects funded by ARC and other agencies	17
5.7 Working with OMB's Made in America Office	17
6. Risks of Not Complying	17
7. BABA and Other Domestic-Content Laws	18
Appendices.....	19
Frequently Asked Questions.....	19
ARC BABA Waiver Request Form.....	19
Market Research Guide	19
Sample Contract Clause and Bid Language.....	19
Subrecipient's Certification of Compliance.....	19
Contractor's Certification of Compliance*	19
Subcontractor's Certification of Compliance*.....	19
Supplier's / Manufacturer's / Steel Mill's Certification of Compliance*	19
Cost of Components — Sample Calculation	19
Pre-Application Planning Checklist.....	19
Comparison of Domestic-Content Laws.....	20
BABA Bill of Materials (Sample).....	20

Overview

The Build America, Buy America Act (BABA) is a federal law. It says that when the federal government helps pay for a public infrastructure project, the iron, steel, manufactured products, and construction materials built into that project must be made in the United States. The goal is to strengthen American manufacturing and build stronger domestic supply chains.

BABA applies to ARC-funded construction projects. ARC cannot release grant money for a construction project unless all of the iron, steel, manufactured products, and construction materials used in it are produced in the United States, or a waiver applies. Two points are easy to miss: **BABA does not expire, and it applies to the whole project even if ARC pays for only part of it.**

Who should read this

Grantees (also called recipients) — you are responsible first and foremost for BABA compliance.

Subrecipients, contractors, subcontractors, suppliers, and manufacturers — BABA duties flow down to you through your subawards and contracts.

Applicants planning a project — reading this early helps you build BABA into your design and budget before you apply.

1. General Information

1.1 How to use this manual

This manual pulls together the main laws, regulations, and OMB guidance that make up the Buy America Preference for ARC construction grants, and it explains them in everyday language. Use it as a working tool while you plan, buy materials, build, and close out your project.

Keep two things in mind. First, this manual is a general guide, not a complete statement of the law. Second, every project is different, so you must apply the rules to your own circumstances. When you need the exact legal wording, go to the source — the ARC website, the ARC BABA Guidance, or the OMB BABA regulations.

If you have questions about a specific project or grant decision, contact the representative of the federal basic agency or registered state basic agency, your ARC state program manager, or your ARC project coordinator. [Frequently Asked Questions](#) also answers common questions.

1.2 When this manual applies

This version follows the ARC BABA Guidance and the OMB BABA guidance. It applies to awards approved by the ARC Federal Co-Chair on or after August 1, 2026. For awards approved before that date, the earlier ARC Interim BABA Guidance still applies.

1.3 Application of BABA to Non-Construction Grants

BABA applies to all ARC grant funding for a public “Infrastructure Project,” regardless of whether it is classified as an ARC Construction grant or an ARC Non-Construction Grant, cooperative agreement, or other financial assistance instrument, when the award funds an “Infrastructure Project,” unless a statutory exception or an ARC approved waiver applies.

Many ARC awards including awards that may support workforce training, education, technical assistance, planning studies, feasibility studies, policy development, or other activities that do not involve the construction, alteration, maintenance, or repair of infrastructure generally are not subject to BABA solely because they receive ARC funding.

BABA applies not only to the construction of new Infrastructure but also to a broad range of activities involving existing Infrastructure. This includes the construction, alteration, maintenance, or repair of Infrastructure, regardless of whether infrastructure is the primary purpose of the project. As a result, projects involving additions, renovations, rehabilitation, modernization, replacement, expansion, maintenance, or repair of covered Infrastructure may be subject to BABA if they are financed, in whole or in part, with any type of ARC grant. ARC must determine whether the facility, system, structure, or improvement constitutes “Infrastructure” under 2 C.F.R. § 184.4(d) and whether the ARC award funds activities involving the construction, alteration, maintenance, or repair of that infrastructure.

The applicability of BABA begins with determining whether a project receiving ARC funds constitutes an “Infrastructure Project” under the government-wide regulations at 2 C.F.R. Part 184. (See definition of “Infrastructure Project”, which encompasses the definition of “Infrastructure”.) Although ARC has some discretion to determine whether a project involves Infrastructure, the determination must be consistent with the broad regulatory definition and applicable OMB guidance.

The government-wide regulations intentionally define infrastructure broadly to ensure consistent application of BABA across Federal financial assistance programs. Pursuant to 2 C.F.R. § 184.4(d), infrastructure includes public infrastructure in the United States and includes roads, highways, bridges, public transportation systems, dams, ports, harbors, maritime facilities, railroads, freight and intermodal facilities, airports, drinking water and wastewater systems, electrical transmission facilities and systems, utilities, broadband infrastructure, buildings and real property, and structures, facilities, and equipment used to generate, transport, and distribute energy, including electric vehicle charging infrastructure. The regulation expressly says that these categories are just a few examples and do not constitute the entire list, leaving ARC to determine that additional types of public infrastructure are subject to BABA where appropriate.

To determine whether a project involves Infrastructure, 2 C.F.R. § 184.4(d) directs ARC to evaluate whether the project serves a public function. Relevant considerations include (1) whether the infrastructure is publicly owned and operated, (2) privately operated on behalf of the public, or (3) is a place of public accommodation. OMB Memorandum M-24-02 emphasizes that ARC should focus primarily on the intended public function of the project rather than ownership alone. Accordingly, public ownership does not automatically mean BABA applies, nor does ARC's private ownership mean BABA does not apply.

For example, a privately owned electric transmission facility, broadband network, public utility, or airport terminal, may constitute infrastructure because it performs a public function. On the

other hand, a privately owned manufacturing plant, warehouse, office building, research laboratory, or industrial facility constructed solely for the owner's private commercial operations ordinarily would not constitute public infrastructure unless there are program-specific statutes or regulations that extend BABA to these facilities.

Similarly, projects that involve only research, engineering, design, software development, technical assistance, workforce training, feasibility studies, environmental analyses, planning activities, policy development, or the acquisition of movable equipment that is not incorporated into infrastructure generally are not considered Infrastructure Projects unless the Federal financial assistance also funds activities involving the construction, alteration, maintenance, or repair of covered infrastructure. Grants that support only operational activities, program administration, or scientific research without funding infrastructure improvements generally are not subject to BABA.

Ultimately, whether a project constitutes Infrastructure for purposes of BABA is a fact-specific determination that must be made on a case-by-case basis. ARC and other awarding agencies must evaluate the nature and purpose of the project, the function performed by the completed facility or improvement, the extent to which the project serves the public or provides a place of public accommodation, and the ARC BABA Guidance in a manner consistent with 2 C.F.R. Part 184 and OMB Memorandum M-24-02. Public ownership is only one factor in this analysis and is not the only consideration to establish if a project involves Infrastructure. The most important question is whether the federally assisted activity involves the construction, alteration, maintenance, or repair of infrastructure that serves a public function within the meaning of the government-wide regulations.

In conclusion, the determination of the term “Infrastructure” for BABA purposes must still be made on a case-by-case basis based on the specific functions of the project and how the project may benefit the public versus a limited group of users or beneficiaries, with public versus private ownership being only one factor to consider. If you have an ARC Non-Construction grant and need help determining if the proposed project is subject to BABA, reach out to ARC and include the information in the [Request for Infrastructure Project Determination](#) form.

1.4 Plan early (before you apply)

Early planning is the single most important step you can take. Because BABA controls the iron, steel, manufactured products, and construction materials that go into your project, you should think about sourcing while you are still designing the project — long before you apply. Choices you make about design, product selection, buying strategy, and scheduling all affect whether you can comply with BABA without expensive changes later.

Planning also makes your budget more realistic. Domestic products can differ from foreign ones in price, availability, lead time, and shipping. If you identify U.S. suppliers early and get preliminary prices, you can build the true cost of compliance into your budget. Those costs may include higher material prices, redesign or engineering work, supplier research, compliance paperwork, and extra time for domestic manufacturing. The cost associated with preparing a grant application package is not generally eligible for reimbursement.

Planning early also lets you spot products that may be hard to source domestically, check whether an existing general waiver already covers them, and decide whether you may need a project-specific waiver. The [Pre-Application Planning Checklist](#) is built for exactly this purpose.

1.5 Who administers ARC construction projects

ARC funds construction grants, but a partner agency runs day-to-day administration of the grant. That partner is either a Registered State Basic Agency (a state agency, called an RSBA) or a Federal Basic Agency. These agencies have an agreement with ARC to administer projects under their own policies while carrying out ARC's terms, the ARC BABA Guidance, and this manual. Their specific procedures are not covered here — ask the agency administering your grant.

1.6 Key terms

These terms appear throughout the manual. Plain-language explanations are given here; the exact legal definitions are on the ARC website and in the ARC BABA Guidance.

ARC BABA Guidance: ARC's official guidance on applying the Buy America Preference to infrastructure grants, issued August 1, 2026.

ARC BABA Waiver: A written decision by ARC that allows the use of certain materials that do not meet domestic-content rules for a specific project or class of projects. ARC may grant one only when a legal waiver ground is met (public interest, nonavailability, or unreasonable cost). A waiver only covers what its written terms say. A waiver from another agency does not apply to an ARC award unless ARC says so in writing.

Buy America Preference: The domestic-content buying preference set by Section 70914 of BABA.

Component: An item built directly into a manufactured product or an iron or steel product.

Construction materials: A defined list: non-ferrous metals; plastic and polymer-based products (including PVC and composites); glass; fiber optic cable; optical fiber; lumber; engineered wood; and drywall. Minor add-ons or binders do not change the category.

Grantee (or Recipient): The entity awarded ARC financial assistance, whether the project is run by an RSBA or a Federal Basic Agency.

Infrastructure: Public infrastructure that serves a public function — roads, bridges, transit, water and wastewater systems, broadband, energy facilities, buildings, and more. The list is broad, not exhaustive.

Iron and steel: Items made wholly or mostly of iron or steel — meaning iron and steel make up more than 50% of the total cost of all components.

Made in America Office (MIAO): An office inside OMB that reviews waiver requests, promotes consistent rules across agencies, and publishes approved waivers. The MIAO reviews waivers; it does not issue ARC's waivers — ARC does.

Manufactured products: Items processed into a specific form, or combined with other items to create something with new properties. If an item is iron/steel, a construction material, or a Section 70917(c) material, it is not a manufactured product.

Produced in the United States: The core test, which differs by category (see Section 4).

Section 70917(c) materials: Cement and cementitious materials; aggregates such as stone, sand, or gravel; and aggregate binders or additives. These are generally not covered by BABA.

2. BABA Resources for ARC Grantees

These are the primary sources you will use most often. Bookmark them.

- **ARC BABA Guidance** — posted on the ARC website (see www.arc.gov).
- **OMB BABA regulations, 2 CFR Part 184:** ecfr.gov/current/title-2/subtitle-A/chapter-I/part-184
- **Uniform Guidance, 2 CFR Part 200:** ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200
- **Made in America Office waiver site:** madeinamerica.gov/waivers

3. Who Is Responsible for BABA

BABA duties reach everyone on the project, but the way they reach each party is different. The chart below shows who does what.

Party	Main BABA responsibility
ARC	Makes sure ARC construction grants meet BABA. Puts the Buy America Preference in the grant agreement (award), supports compliance, and issues ARC BABA waivers (coordinating with OMB's Made in America Office).
Registered State Basic Agency (RSBA)	Runs state-administered ARC grants under its agreement with ARC. Oversees grantee compliance, handles grantee waiver requests, monitors the project (including site visits), and reports to ARC. Send your BABA questions here first.
Federal Basic Agency	Runs federally administered ARC grants. Handles BABA compliance under its own guidance and terms, plus BABA law and OMB guidance.
Grantee (you)	Carries primary responsibility. Makes sure all materials meet domestic-content rules, passes BABA requirements down into every subaward and contract, keeps documentation, and supports audits and reviews.
Subrecipients	Responsible for their own compliance and records, must follow waiver rules, and must pass BABA down to their own contractors and suppliers. (See Subrecipient's Certification of Compliance)
Contractors & subcontractors	Architects, engineers, and construction and procurement firms must comply and pass requirements down to their subcontractors and suppliers, and certify compliance. (See Appendices F and G.)
Suppliers & manufacturers	Must understand BABA standards and provide the certifications and documents that prove compliance. (See Supplier's / Manufacturer's / Steel Mill's Certification of Compliance.)

The big idea: "flow-down"

ARC does not have a direct contract with your subrecipients, contractors, or suppliers. Instead, BABA duties "flow down" to them through the terms you put in your subawards and contracts. That is why including the ARC BABA term and condition (Section 4.1) in every subaward, contract, subcontract, bid documents (including project specifications) and purchase order is so important — it is how the rule reaches everyone doing the work.

4. Building BABA Into Your Award

4.1 The required Buy America term and condition

Every ARC construction award must include the Buy America Preference in its terms and conditions, and you must include it in all subawards, contracts, subcontracts, and purchase orders. The standard language below (the ARC BABA term and condition) is what must appear and flow down.

ARC BABA Term and Condition (Standard Language)

Buy America. General. *None of the ARC funds provided under this grant award may be used for a project for infrastructure unless:*

- 1) *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;*
- 2) *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 as defined in 2 CFR 184.5, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and*
- 3) *all construction materials (excluding cement and cementitious materials, aggregates such as stone, sand, or gravel or aggregate binding agents or additives) are manufactured in the United States — this means that all manufacturing processes for the construction material occurred in the United States as defined in 2 CFR 184.6.*

Incorporation into an infrastructure project. *The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. It does not apply to tools, equipment, or supplies such as temporary scaffolding that are brought to the site and removed before completion, or to movable equipment and furnishings such as chairs, desks, and portable computers that are used in the finished project but are not integral or permanently affixed.*

Categorization of articles, materials, and supplies. Each article, material, or supply must be classified in only one category: iron or steel products, manufactured products, construction materials, or Section 70917(c) materials. Classification is based on the item's status when brought to the work site for incorporation into the project, and the Buy America preference applies only to the single category in which it is classified.

Waivers. A waiver on the application of the domestic content procurement preference (Buy America) may be available to the ARC grantee when one of the following exceptions are present: (a) the domestic content procurement preference is inconsistent with the public interest; (b) 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) the inclusion of iron, steel, manufacture products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. The Grantee will request the domestic content procurement preference (Buy America) waiver in writing and according to the instructions, format, content, and supporting materials described in the ARC Buy America website, available at <https://www.arc.gov/resource/arc-baba-guidance/>. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

Definitions. Definitions for the terms used in this Article may be found on the ARC Buy America website, available at <https://www.arc.gov/resource/arc-baba-guidance/>. The definitions on the ARC Buy America website are hereby incorporated by this reference.

4.2 Building BABA into your project, start to finish

Work with your Basic Agency to build BABA into every stage of the project, including obtaining all needed certifications and documenting compliance, from the first design to final closeout. How this works depends on who administers your grant.

If a Federal Basic Agency administers your grant

Once ARC approves your grant, you sign a grant agreement with the Federal Basic Agency (not ARC or an RSBA). That agency may require you to complete its own application steps first and will provide the agreement. You will need to comply with the Federal Basic Agency's award terms and conditions. From then on, the Federal Basic Agency monitors BABA compliance, and you follow its BABA procedures and terms, including for waivers.

If an RSBA (state) administers your grant

After the Federal Co-Chair approves your grant, you sign a grant agreement with ARC in Pathways. An automatic email then tells everyone — including your RSBA contact and your ARC State Program Manager — that the grant is open. From then on, you receive payments from and send progress reports to the RSBA. The agreement names the RSBA as the administrative and fiscal agent, includes the ARC BABA term and condition, and describes your duties, including providing supporting documents with each payment request.

You should contact the RSBA before you do anything on the project, such as procurement or bidding, and must comply with BABA under the ARC BABA Guidance and this manual through procurement, bidding, construction, and after completion. A new grant agreement is needed for each ARC construction grant. The RSBA may also enter a separate implementation agreement with you.

How the RSBA monitors your project

The RSBA makes sure your use of ARC funds follows BABA and all other applicable rules. It helps you start work on time, resolves BABA problems, and monitors compliance — including through site visits, documentation, and required Basic Agency Monitoring Reports (BAMRs).

Your project administration duties

You handle contracting and the day-to-day running of the project. Send all grant questions to the RSBA not ARC. The RSBA processes your payment requests, reviews your reports, and handles amendment requests, anything needing ARC approval goes from you to the RSBA, then to ARC. It is important to remember that you always need to consult with the RSBA if a waiver applies to your project before concluding that it does.

Remember the flow-down: subrecipients, contractors, and suppliers are bound through your subawards and contracts, not through ARC directly. They must supply compliant materials, hand over origin certifications or documents when asked, and cooperate with any audit or verification. You achieve flow-down compliance by putting the ARC BABA term and condition in every subaward, contract, and subcontract.

You and the RSBA must keep records and oversee compliance the entire time covered iron and steel, construction materials, and manufactured products are going into the project. If a waiver is involved, you must follow the ARC BABA waiver rules in Section 5. Part of monitoring is collecting compliance certificates from the parties on the project. In consultation with your RSBA, these templates in the appendices can be adapted to your project:

- [Sample contract clause / contractor bid language](#)
- [Subrecipient's certification of compliance](#)
- [Contractor's certification of compliance](#)
- [Subcontractor's certification of compliance](#)
- [Supplier's / manufacturer's certification of compliance](#)

Contractor, subgrantees, and supplier certificates should come to you and the RSBA with each monthly progress payment application, or whenever a new batch of covered material arrives at the jobsite.

Your grantee checklist (RSBA-administered projects)

Working with your RSBA, and under your award terms, the ARC BABA Guidance, and this manual, you must:

1. Make sure no grant funds pay for a construction project unless all iron and steel, manufactured products, and construction materials are produced in the United States (see Section 4.4–4.6 for what each term means).
2. Factor BABA compliance into your project design and budget (see Section 1.3).
3. Make sure all procurement follows the Buy America Preference, including keeping records that show domestic sourcing or a written ARC BABA waiver for the item.
4. Include the ARC BABA term and condition and the [Sample Contract Clause and Bid Language](#) in all specifications, solicitations, and contracts.
5. Require the compliance certifications (**Certification of Compliance – Subrecipient, Contractor, Subcontractor, Supplier/Manufacturer/Steel Mill**) in all subawards and contracts, delivered to you and the RSBA before final closeout. Work with the RSBA to monitor subrecipients and to process any waiver requests.
6. Work with the RSBA to apply a general applicability waiver and document in the project file whenever a general applicability waiver is used; the RSBA must report it to ARC in the BAMR.
7. Submit project-specific waiver requests promptly through the RSBA using the [ARC BABA Waiver Request Form](#). Note: a waiver cannot cover costs already incurred before its effective date.
8. Keep documentation that proves compliance — verify before and at the time of incorporation, collect manufacturer and all relevant self-certification letters, and retain records to satisfy audits.
9. Send BABA questions to your RSBA point of contact.

RSBA Monitoring Reports (BAMRs)

Interim BAMR. The RSBA files an interim BAMR each year. It gives basic project information, a timeline for major milestones, a financial report, a BABA compliance update, and performance measures to ARC. It is finalized once the appropriate official signs it.

Final BAMR. After the project is finished and the final inspection is done, the RSBA submits a final BAMR to ARC. It should be submitted only after all amendments are processed and, for state projects, after the RSBA submits the final drawdown (for federal projects, after all funds are disbursed or unspent funds are returned).

Interim and final BAMRs must report on BABA compliance.

Audit and oversight

Even after closeout, your project can be reviewed through Single Audits, Office of Inspector General (OIG) audits, ARC monitoring, Government Accountability Office reviews, or other federal oversight. You must support these reviews and produce all supporting BABA

documentation on request. Failing to keep adequate records or show compliance can lead to questioned costs, repayment, or other penalties.

4.3 EPC/S and project management contracts

Sometimes a third party such as an Engineering, Procurement and Construction/Service (EPC/S) contractor or a project management contractor oversees the work. These firms are often on the front line and can watch BABA compliance as materials go in. The RSBA, grantee, and any subrecipient must each make sure the ARC BABA terms and conditions and all BABA requirements are written into the scope of EPC/S contracts.

4.4 What counts as iron and steel

An item is an iron or steel product if it is made wholly or mostly of iron or steel (that is, if iron and steel make up more than 50 percent of the total cost of all its components) and it is permanently built into the project. Examples include structural steel, rebar, beams, columns, plate, and pipe. For these items, all manufacturing processes, from the initial melting stage through coating, must occur in the United States (except for certain metallurgical additives).

This is the strictest BABA standard because it covers nearly every manufacturing step, not just the final one. Getting the category right matters: if an item is not mostly iron or steel, it may instead be a manufactured product or a construction material, which have different tests. Classifying correctly is the first step to applying the right standard.

4.5 What counts as construction materials

Whether something is a "construction material" depends on the legal definition, not on everyday industry usage. The term includes only these categories: non-ferrous metals; plastic and polymer-based products (including PVC, composites, and polymers in fiber optic cables); glass (including optic glass); fiber optic cable (including drop cable); optical fiber; lumber; drywall; and engineered wood. Minor add-ons or binders do not change the category.

If two or more of these are combined through manufacturing, or one is combined with a non-listed material through manufacturing, the result is usually a manufactured product, not a construction material. For example, plate glass is a construction material, but a plastic-framed sliding window is a manufactured product. If the listed materials have been made into a distinct product with a specific function, like a pump or an HVAC unit, it is a manufactured product.

For construction materials, BABA requires that all manufacturing processes for that category happen in the United States. Unlike manufactured products, there is no component-cost test. Unlike iron and steel, there is no "from initial melting" requirement.

4.6 What counts as a manufactured product

A manufactured product is an item made through a manufacturing process and permanently built into the project, but that is not an iron or steel product or a construction material. It has been processed into a specific form, or combined with other items, to create something with new properties. To meet BABA, a manufactured product must be manufactured in the United States and meet the applicable domestic-component-cost test. Common examples: generators, pumps, transformers, switchgear, HVAC equipment, boilers, control panels, and packaged treatment systems.

Kits count as one manufactured product

A product delivered as a kit in modular or prefabricated pieces assembled on site can still count as a single manufactured product, as long as it was manufactured before delivery and works as one unified product. A "kit" is a discrete product, machine, or device with a unified function. A broad system of connected devices (like a whole-building HVAC system) is not a kit, and neither is an entire project. You must consult with the RSBA before determining what is a kit and how it should be treated.

For the cost-of-components test, the "manufacturer" is the firm that performed the final manufacturing of the kit's components, not the contractor who assembles it on site. So transportation to the site and on-site assembly and installation labor are not counted as manufactured-product costs in the calculation.

Determining the cost of components

To decide whether U.S.-made components are more than 55 percent of total component cost:

1. **For components you buy:** the acquisition cost, including transportation to where it is built into the product (whether or not paid to a U.S. firm) and any applicable duty.
2. **For components you make:** all costs of manufacturing that component, including transportation as above plus allocable overhead, but excluding profit.

In both cases, do not count the cost of manufacturing the final product itself. See [Cost of Components – Sample Calculation](#) for a full sample calculation.

4.7 International trade agreements

BABA must be applied consistently with U.S. obligations under international agreements. But those agreements generally do not create an exemption from BABA unless Congress, OMB, or ARC has expressly provided one. Unlike the Buy American Act for direct federal purchasing, BABA has no blanket waiver for products from WTO Government Procurement Agreement or free-trade-agreement countries. So the right steps are: classify the item, check whether it meets the domestic-manufacturing test, and only then consider whether an approved waiver applies. If no waiver has been adopted, assume foreign-made materials are still subject to BABA. (See Section 5 on waivers.)

Some states in ARC's region have tied their procurement to trade agreements and appear on the relevant schedules. If such a state receives ARC funds, ARC will consider public-interest waiver requests so the state can meet its agreement obligations. For the current list of covered states and entities, see the USTR government procurement page. (That list is maintained by the U.S. Trade Representative, not ARC.)

4.8 Disasters and emergencies

Some emergency and disaster work is excluded from BABA. BABA generally does not apply to assistance authorized under sections 402, 403, 404, 406, 408, or 502 of the Stafford Act tied to a Presidentially declared major disaster or emergency (sections 401 or 501), or to pre- and post-disaster emergency response spending. If the project is funded under a different authority, or is not tied to a qualifying declaration, the exclusion does not apply. See 42 U.S.C. 5122. After an emergency or disaster, always check with your Basic Agency before concluding BABA does not apply.

"Emergency" means an occasion for which the President determines federal help is needed to supplement state and local efforts to save lives, protect property and public health and safety, or lessen the threat of a catastrophe.

"Major disaster" means a natural catastrophe (hurricane, tornado, storm, flood, earthquake, and the like), or any fire, flood, or explosion, that the President determines is severe enough to warrant major disaster assistance under the Stafford Act.

5. ARC BABA Waivers

5.1 ARC's waiver policy

BABA reflects Congress's goal of strengthening U.S. manufacturing, building resilient supply chains, and creating good jobs. At the same time, Congress recognized that important projects must be able to move forward when domestic sourcing is not feasible. So BABA allows only limited waivers for public interest, nonavailability, or unreasonable cost. OMB's guidance treats waivers as the exception, not the rule. ARC will review waiver requests carefully against the legal standards, so waivers are neither granted so freely that they undermine domestic production, nor withheld so rigidly that they needlessly delay projects.

ARC may reject or grant waivers in whole or in part. Wherever possible, ARC prefers project-level, product-specific waivers, and may narrow a project-level waiver to a single product. When ARC issues a waiver, it follows these principles:

- **Time-limited:** where appropriate, a waiver is limited by time (for example, one to two years) or phased out, so domestic producers gain access to the market as supply becomes available.
- **Targeted:** waivers not tied to a single project apply only to the specific items, products, or materials that are necessary.
- **Conditional:** ARC tries to attach conditions that support BABA's goals.

ARC waivers apply only to future spending after the waiver's effective date. A waiver can be granted after an award is made, but it cannot cover costs already incurred for covered items before the effective date.

5.2 Grounds for a waiver

ARC may waive the Buy America Preference on only one of three grounds:

1. **Public interest waiver** — applying the preference would be inconsistent with the public interest.
2. **Nonavailability waiver** — the needed iron, steel, manufactured products, or construction materials are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.
3. **Unreasonable cost waiver** — using U.S.-made materials would raise the overall project cost by more than 25 percent.

For state-administered grants, if you reasonably believe one of these applies, submit a written waiver request to ARC through your RSBA, following the procedures and documentation rules

in this manual. Every request must include a detailed justification for using non-domestic goods and a certification that you made a good-faith effort to solicit bids for domestic products.

To the greatest extent practicable, your request should include:

- Waiver type (nonavailability, unreasonable cost, or public interest).
- Recipient name and Unique Entity Identifier (UEI).
- ARC program name and funding amount.
- Total estimated infrastructure expenditures (all ARC and other funds).
- Project description and location (as known).
- The iron/steel items, manufactured products, and construction materials to be excepted — with name, cost, country of origin (if known), and PSC and NAICS codes.
- A description of your efforts to avoid needing a waiver (market research, industry outreach, lack of compliant bids).
- Market research details: who did it, when, what sources, and what methods.
- The anticipated impact if no waiver is issued.

Submit waiver requests to ARC through the RSBA using the [ARC BABA Waiver Request Form](#).

5.3 Market research

Market research is the organized effort to find out whether a compliant domestic product that meets your project's technical needs is available in sufficient quantity, of satisfactory quality, and at a reasonable cost. It does two jobs: it helps you meet BABA, and it provides the factual basis for a waiver request (usually nonavailability or unreasonable cost).

OMB's guidance is clear: you must do more than simply claim a domestic product is unavailable. You must show a reasonable, good-faith effort to find compliant domestic sources first. Scale your research to the size and complexity of the purchase. At a minimum, identify potential domestic manufacturers and suppliers; ask about availability, manufacturing location, capabilities, capacity, lead times, and pricing; and document what you find. Research can take the form of requests for quotes, online searches, and similar steps.

For a nonavailability waiver, agencies typically expect you to contact at least three reliable domestic manufacturers or distributors, review catalogs and product literature, search industry directories and trade associations, review purchasing schedules where relevant, and keep records of all communications.

For an unreasonable cost waiver, obtain comparable price quotes for both domestic and foreign products meeting the same specifications, state your assumptions, and show that using domestic materials would raise the overall project cost by more than the 25 percent threshold — not just the cost of one item.

Before concluding a waiver is needed, also consider reasonable alternatives: extending lead times, resequencing work, adjusting specifications, or using a different but functionally equivalent domestic product. OMB has stressed that waivers should not rest on mere preference or convenience when a compliant domestic option is reasonably available.

Keep your documentation — it is the heart of the waiver record. See the [Market Research Guide](#) for detailed market-research methods and examples.

5.4 How ARC processes a waiver request

When ARC receives your request, it checks whether one of the three legal grounds is met and reviews your application and supporting documents — market research, technical analyses, and cost information. If ARC concludes a waiver is justified, it prepares a detailed written explanation of the factual and legal basis.

Before issuing a final waiver, ARC will post the proposed waiver and its justification on a public website, allow a public comment period of at least 15 days (at least 30 days for modifying or renewing a general applicability waiver), and, unless OMB directs otherwise, submit the proposed waiver to OMB's Made in America Office for review. After comments and OMB review, ARC may issue a final waiver. You and the RSBA keep a complete record of the request, analyses, comments, OMB review, and final decision.

5.5 After a waiver is issued: implementation and monitoring

A waiver is the beginning of an ongoing duty, not the end of compliance. It authorizes only the specific foreign-produced item named in the waiver, and only to the extent described. You must build the waiver into procurement and contract administration, tell contractors and subcontractors its scope and conditions, and buy only the approved items under it. Keep documentation showing that what you bought matches the waiver — purchase orders, invoices, manufacturer information, and installation records. Any material substitution, quantity increase, or change outside the waiver's scope may require a new waiver.

ARC posts the final waiver and justification under 2 CFR 184.7. You and the RSBA keep the administrative record. During construction, the RSBA monitors compliance through reimbursement reviews, project monitoring, desk reviews, site visits, and procurement-record checks, confirming the waiver is used only for approved products.

Keep all waiver records for the period required under the Uniform Guidance — generally three years from the final expenditure report, longer if litigation, audit, or other circumstances apply. Records include the request, market research, correspondence, the published determination, procurement documents, invoices, delivery records, and evidence of where the waived products were used. They must be available to the RSBA, ARC, inspectors general, the GAO, and auditors.

Reflect approved waivers in your project documentation, reimbursement requests, progress and performance reports, and closeout submissions. At closeout, you and the RSBA certify BABA compliance and identify any waivers relied on.

Please note ARC may have adopted program-wide or agency-wide general applicability waivers that may apply to your grant, product or project (i.e., an ARC small grants or *De Minimis* BABA waiver). You should be able to consult the ARC BABA website to view a list of ARC's approved general applicability, waivers based on an international treaty, and project-specific waivers referencing any potential waiver that could apply to your award or project. If you believe any such waiver is applicable, you should contact the RSBA and provide a rationale for using the waiver. Note that waivers have specific applicability conditions and other requirements, which must be followed. You may not apply a waiver of an agency other than

ARC without specific permission based on its applicability and you must consult your RSBA prior to a determination.

5.6 Projects funded by ARC and other agencies

The Buy America Preference applies at the project level to the entire infrastructure project — even when the project also receives non-ARC funds, and even when infrastructure is only part of a broader award.

If your project gets ARC funds plus funds from another source, it must still follow ARC's guidance and manuals, including on waivers. You may not rely on another agency's guidance or waivers to satisfy the Buy America Preference for the ARC-funded project — not even for part of it. When you receive non-ARC funds, check with that other agency about its own BABA duties. Meeting another agency's standards does not excuse you from ARC's.

Multi-agency coordination. When several agencies fund a project and ARC provides the largest federal share, ARC generally leads coordination of any proposed waiver, working with the RSBA. Even so, each agency remains responsible for its own Buy America obligations, and one agency's waiver does not automatically apply to another's funding. You still must meet all ARC requirements, including submitting the ARC BABA Waiver Request Form, and work with every funding agency on its requirements. If a federal agency (E.g. USDA, EDA, HUD) is the largest funder of your project, then generally that agency will lead the proposed waiver process.

5.7 Working with OMB's Made in America Office

Role of OMB. OMB is the main policy and coordinating body for BABA across the federal government. Under Section 70915 of BABA, OMB issues guidance to agencies. OMB issued Memoranda M-22-11 and M-24-02 and promulgated 2 CFR Part 184, which together set consistent definitions, categorization standards, and waiver procedures across programs.

Role of the Made in America Office (MIAO). Created by Executive Order 14005 in 2021, the MIAO is the central authority for enforcing Made in America laws. Its most important BABA role is waiver review. Before ARC grants a waiver, it must give the MIAO a description and a detailed justification. The MIAO reviews the proposed waiver and clears it for public notice; after the comment period, ARC submits a final version for the MIAO's determination. The MIAO also oversees publication of proposed and final waivers on the central transparency website.

6. Risks of Not Complying

Not complying with BABA can have meaningful legal and financial consequences. Depending on how serious the problem is, ARC may require repayment of federal funds tied to the noncompliant spending, disallow costs, or withhold future funding. You and your subrecipients may also face administrative remedies under your award — corrective action plans, enhanced monitoring, suspended payments, or termination.

In cases of willful misconduct, fraud, or false certifications, recipients may face liability under the False Claims Act or other federal statutes. Serious or repeated violations may factor into suspension or debarment, which can affect your ability to receive future federal assistance

from ARC and federal agencies. The best protection is strong internal controls, careful supply-chain documentation, and prompt attention to any problems you find.

7. BABA and Other Domestic-Content Laws

BABA is not the only domestic-content law, and although some requirements and terminology they use may be similar to those of BABA, the others are most often not the same as BABA and generally do not apply to ARC financial assistance. Compliance with one does not prove compliance with another, so a project subject to more than one law must be analyzed separately under each. The chart below summarizes the differences; [Comparison of Domestic-Content Laws](#) has a fuller comparison.

Feature	BABA	Buy American Act (1933)	FTA Buy America	IRA Domestic Content
Applies to	Infrastructure grants (financial assistance)	Direct federal procurement contracts	Federally funded transit projects	Clean-energy tax credits
Product categories	Iron/steel, manufactured products, construction materials	End products	Steel/iron, manufactured	Steel/iron, manufactured
Cost-percentage test	Yes (manufactured products, 55%)	Yes (60%)	No (except rolling stock)	Yes (manufactured)
Waivers	Public interest, nonavailability, cost	Yes (incl. Trade Agreements Act)	Yes	N/A (bonus credit)

Key point: the Buy American Act covers direct federal purchasing (not grants or cooperative agreements) and allows Trade Agreements Act waivers in said context — a path that does not exist under BABA. FTA Buy America continues to govern transit projects under its own authority and waiver requirements, with 2 CFR Part 184 mainly adding construction-materials coverage, among other changes. The IRA direct pay tax provisions and domestic-content bonus are voluntary tax incentives with no waiver mechanisms. Because the categories, thresholds, and waiver structures all differ, a project subject to more than one — such as a federally assisted clean-energy build — needs an independent analysis under each.

Where to get help

For any BABA question about your project or award, contact your point of contact at the RSBA administering your ARC grant. RSBA have access to ARC resources to get your questions answered. The appendices that follow give you the forms, templates, and step-by-step tools you will need.

Appendices

Frequently Asked Questions

<https://www.arc.gov/resource/baba-faq/>

ARC BABA Waiver Request Form

<https://www.arc.gov/resource/baba-waivers/>

Market Research Guide

<https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Market-Research-Guide.pdf>

Sample Contract Clause and Bid Language

<https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Sample-Contract-Clause-and-Bid-Language.pdf>

Subrecipient's Certification of Compliance

<https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Subrecipients-Certification-of-Compliance.pdf>

Contractor's Certification of Compliance

<https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Contractors-Certification-of-Compliance.pdf>

Subcontractor's Certification of Compliance

<https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Subcontractors-Certification-Compliance.pdf>

Supplier's / Manufacturer's / Steel Mill's Certification of Compliance

<https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Suppliers-Manufacturers-Certification-of-Compliance.pdf>

Cost of Components — Sample Calculation

<https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Cost-of-Components-Sample-Calculation.pdf>

Pre-Application Planning Checklist

<https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Pre-Application-Planning-Checklist.pdf>

Comparison of Domestic-Content Laws

<https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Comparison-of-Domestic-Content-Laws.pdf>

BABA Bill of Materials (Sample)

<https://www.arc.gov/wp-content/uploads/2026/07/ARC-BABA-Bill-of-Materials-Sample.pdf>

Request for Infrastructure Project Determination

<https://www.arc.gov/wp-content/uploads/2026/08/Request-for-Infrastructure-Project-Determination.pdf>