



Build America, Buy America Act Compliance Discussion

January 16, 2025



AGENDA

- BABA 101
 - What is Build America, Buy America Act (BABA)?
 - How does it compare to Buy American and the Domestic Content Bonus?
- BABA details
 - Definition of a manufactured product
 - Computation of Component Costs
 - Attesting BABA compliance for manufactured products
 - Examples of BABA relevant projects
- BABA waivers
 - Types of waivers
 - Current solar-relevant product waivers
- Discussion

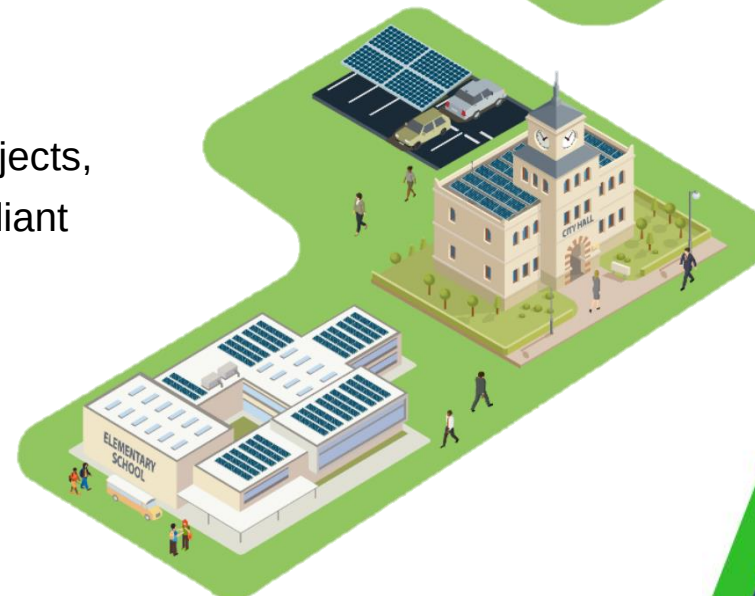


WHAT IS BUILD AMERICA BUY AMERICA ACT?

The Build America, Buy America Act (BABA) was passed as part of the Infrastructure Investments and Jobs Act of 2021.

Along with updating and consolidating various domestic procurement preferences, it requires that “the head of each Federal agency must 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” ([2 CFR 184.1](#)).

Non-residential solar installations are considered infrastructure projects, which means government awardees are now seeking BABA-compliant solar products.



WHAT IS BUILD AMERICA BUY AMERICA ACT?

		Buy American Act (BAA)	Build America, Buy America Act (BABA)	Domestic Content Bonus (DCB)
Applies to...		Recipients of government contracts	Applies to not for-profit entities receiving federal grants or loans	Businesses receiving the ITC or PTC electing the bonus
Requires...		A preference for domestic end products	All iron, steel, manufactured products, and construction materials be produced in the United States	Any steel, iron, or manufactured product which is a component of such facility be produced in the United States
Produced in the United States is defined...	for iron and steel as...	From initial melting through the application of coatings.		
	for products as...	>60%* of the cost of components, assessed at the end product level	>55% of the cost of components, assessed at the manufactured product level	>40%* of the cost of components, assessed at the project level
Costs are...		Acquisition costs	Acquisition costs	Direct costs
Administered by...		Individual agencies	Individual agencies	IRS
Can be waived?		Yes, for commercially available off-the-shelf (COTS) items.	Yes, but the waiver process is time-consuming and not guaranteed.	[Not applicable, DCB is optional]

*increases over time, in some cases

DEFINITION OF A MANUFACTURED PRODUCT

According to [2 CFR 184](#), “manufactured products” means:

- (1) Articles, materials, or supplies that have been:
 - i. Processed into a specific form and shape; or
 - ii. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
- (2) If an item is classified as an iron or steel product, construction material, or [cement, aggregate, or aggregate binding agent], then it is not a manufactured product.

Examples:



Module



Non-Steel Racking



Inverter

COMPUTATION OF COMPONENT COSTS

According to [2 CFR 184.5](#) the manufactured product must be both (a) manufactured in the United States and (b) the cost of components of the manufactured product that are mined, produced, or manufactured in the United States must be greater than 55 percent of the total costs of all the components of the manufactured product. In determining whether the cost of components for manufactured products meets that threshold, manufacturers must use the following instructions:

- (a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a) above, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

CALCULATING BABA COMPLIANCE

- All costs used to calculate BABA domestic content are the acquisition cost of components incorporated into the manufactured product
- Acquisition cost includes shipping, sales tax, and duties
- Only component costs are considered, no equipment or facility costs and no overhead like labor, utilities, insurance, or warranties
- Assign each component as foreign or domestic
 - To be domestic, the materials and subcomponents must have been substantially transformed to produce the component in the United States
 - Otherwise, the component is considered foreign

$$\text{Domestic Percentage} = \frac{\text{Cost of Domestic Components}}{\text{Cost of All Components}}$$

BABA DETAILS

MANUFACTURER ATTESTATION STATEMENTS

The Solar Energy Technologies Office (SETO) is piloting collecting and publicly hosting self-attestations from solar manufacturers that they can provide BABA compliant solar manufactured products.

A [template self-attestation](#) is provided.

Completed self-attestations can be [submitted to DOE to be posted](#). When submitting an attestation, you will have the option to request to also be listed as self-attesting BABA compliance on SETO's [Solar Manufacturing Map](#).

DOE financial assistance awardees will need to collect attestation statements and provide them to DOE as part of their award to prove BABA compliance.



EXAMPLES OF BABA RELEVANT PROJECTS

BABA is relevant to grants and loans from agencies to entities which are not for-profits.

DOE projects range in type from congressionally directed spending (aka earmarks) to multi-year community development projects.

Congressionally Directed Spending projects are focused on deploying solar at individual locations or developing local solar related capabilities.

- On the small end, projects can be 1-10 kW in size.
- On the high end, projects can be multiple millions of dollars, when cost share is included.
- Because projects can be very small and be built by small developers/installers it is important that can identify BABA compliant products from distributors and get the associated attestation from the OEM about the products BABA compliance.



TYPES OF BABA WAIVERS

BABA waivers are available

- 1) For the public interest,
- 2) On the grounds on non-availability, either in sufficient and reasonably available quantities or of satisfactory quality, or
- 3) If meeting BABA-compliance would increase the cost of the overall project by more than 25 percent.

BABA waivers can be project-specific or blanket waivers covering types of projects within or between agencies.

Proposed waivers must be publicly available for comment for at least 30 days for public interest waivers and 15 days for all other waivers.



CURRENT SOLAR-RELEVANT WAIVERS

In general, waivers are posted to the [Made in America Office](#). Several solar-relevant blanket waivers were recently posted:

DOE (solar modules)

- [Energy Improvement in Rural or Remote Areas and Weatherization Assistance Program: Enhancement and Innovation Fund](#)
- [Clean Energy Demonstrations on Current and Former Mine Land and Weatherization Assistance Program: Sustainable Energy Resources for Consumers](#)
- [Energy Efficiency and Conservation Block Grant and Fiscal Year 2022-2023 Congressionally Directed Spending Program](#)
- [Omnibus including Congressionally Directed Spending \(CDS\) for Fiscal Years 2024](#)
- [Industrial Emissions Demonstrations and Advanced Industrial Facilities Deployment Programs](#)

EPA (solar modules)

- [Office of Environmental Justice and External Civil Rights](#)
- [Office of Air and Radiation](#)
- [Office of Land and Emergency Management](#)
- [Office of Water](#)
- Office of the Greenhouse Gas Reduction Fund's
 - [Clean Communities Investment Accelerator Program](#)
 - [National Clean Investment Fund Program](#)
 - [Solar for All Program](#)

USDA (solar modules)

HUD (solar modules)

[Small Grants, De Minimis, and Minor Components Multi-Agency Tribal Waiver](#)

**THANK YOU FOR
YOUR TIME**

QUESTIONS?