



BUILD AMERICA, BUY AMERICA ACT

BABA Compliance Training

State Orphaned Wells Program | North Dakota DMR

Presented by AG Witt | Infrastructure Investment and Jobs Act (IIJA)



Training Agenda

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Background & Legal Authority

Key Dates & Authority



Nov 15, 2021

IIJA enacted – BABA becomes law (Pub. L. 117-58)



Feb 21, 2023

DOI approves two BABA waivers (expire Feb 20, 2028)



Aug 23, 2023

OMB Final Guidance published (2 CFR Part 184)



Oct 23, 2023

OMB guidance takes effect

What BABA Requires

BABA mandates that **none of the funds** made available for a Federal financial assistance program for infrastructure may be obligated unless all iron, steel, manufactured products, and construction materials used in the project are **produced in the United States**.

This applies to:

- North Dakota Orphaned Wells Program grants funded under IIJA § 40601 (42 U.S.C. § 15907)
- All plugging and remediation projects using Federal funds
- All contractors, subcontractors, and subrecipients



BABA Sourcing Requirements

Iron & Steel Products

100% U.S. Manufacturing

ALL manufacturing processes — from initial melting through coating — must occur entirely within the United States.

Note: "Predominantly" iron/steel = iron/steel cost exceeds 50% of total component cost.

Manufactured Products

>55% U.S. Components + U.S. Final Mfg.

More than 55% of the total cost of all components must be U.S.-sourced, AND final manufacturing must occur in the U.S.

Note: Geomembranes, drainage composites, and similar materials fall in this category.

Construction Materials

100% U.S. Manufacturing Processes

All manufacturing — from initial production of raw materials through final finishing — must occur entirely in the United States.

Note: Plastic/polymer-based products, nonferrous metals, glass, lumber, and engineered wood are included.



What Is NOT Covered by BABA

BABA sourcing requirements do NOT apply to:



Temporary Equipment & Tools

Materials or items temporarily brought to the site and removed before project completion — tools, heavy equipment, and furnishings not permanently affixed to the project or site.



Section 70917(c) Materials

Cement and cementitious materials; aggregates such as stone, sand, or gravel; and aggregate binding agents or additives are explicitly exempt from BABA requirements.



DOI Approved Waivers

Small Grant Waiver (< \$250,000) and De Minimis Waiver (up to 5% of project cost, not to exceed \$1M) — both approved by DOI Feb 21, 2023 and effective through Feb 20, 2028 — may apply to certain awards.



Required Documentation — The 3-Part Standard

Every BABA-covered purchase must be supported by all three of the following:

1

Manufacturer Proof of U.S. Origin

- Letter from manufacturer on company letterhead confirming product was manufactured in the U.S.
- Must state that raw materials used were also produced in the U.S.
- Must identify the specific product and manufacturing location (city, state).
- Example: SKAPS Industries letter for Geomembrane LLD-30S NOM; JDR Enterprises certificate for J-Drain composites

2

Proof of Purchase from Invoiced Supplier

- Purchase Order (PO) or equivalent document showing the product was purchased from the supplier.
- Must match the product described in the manufacturer's letter.
- Identifies the specific supplier and the material quantity/description.

3

Proof of Payment

- Invoice, cancelled check, bank statement, ACH record, or credit card statement showing payment was made.
- Must correspond to the PO and the manufacturer's documentation.
- Retained for the life of the grant plus any applicable records retention period.



Documentation Examples — Manufacturer Compliance Letters

Example 1 — Geomembrane

SKAPS Industries

Product: Geomembrane LLD-30S NOM

Manufactured at: 571 Industrial Pkwy, Commerce, GA 30529

Raw materials: All produced in U.S.A.

Date: April 14, 2026

✓ Satisfies Requirement 1

This letter on SKAPS letterhead, signed by VP Nilay Patel, confirms U.S. manufacture and U.S. raw materials — exactly what DOI requires for Manufacturer Proof.

Example 2 — Drainage Composite

JDR Enterprises / J-Drain

Product: Prefabricated Drainage Composites (J-Drain)

Manufactured at: 1630 North 5th St, Madison, GA 30650

BABA cert: Certificate of Compliance signed 08/01/2023

Officer: Ryan Hatrak, VP Operations

✓ Satisfies Requirement 1

JDR's formal BABA Certificate of Compliance explicitly states all products are manufactured in the USA and meet Buy America guidelines — a clear, signed statement on company letterhead.



Contractor & Subrecipient Obligations

Who Must Comply

- State Grant Recipients (ND DMR)
- Prime Contractors
- Subcontractors (at every tier)
- Subrecipients
- Any entity purchasing materials with Federal funds or program income

Flow-Down Requirement

BABA requirements **MUST** be included in all subawards, contracts, subcontracts, and purchase orders.

Record Retention Requirements

Manufacturer Documentation

Compliance letter, certificate of origin, or BABA certificate for every covered product.

Purchase Orders

PO or equivalent for every BABA-covered material purchase.

Proof of Payment

Invoice, cancelled check, ACH, or bank statement matching each PO.

Waiver Documentation

If a waiver applies, retain the DOI waiver approval and applicable correspondence.

All records must be retained and made available upon DOI request.



When Waivers May Be Available

BABA § 70914(b) authorizes three types of waivers:

1

Public Interest Waiver

Applying BABA would be inconsistent with the public interest.

2

Non-Availability Waiver

The required 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

Including U.S.-produced materials would increase the overall project cost by more than 25%.

How to Request a Waiver

Contact your Financial Assistance Officer (FAO) from your Notice of Award. Waiver requests must be in writing, are subject to a 15-day public comment period, and must be reviewed by OMB's Made in America Office. See: doi.gov/grants/buyamerica



BABA Compliance Checklist



Identify covered materials

Determine which iron/steel, manufactured products, or construction materials will permanently become part of the project.



Verify U.S. origin before purchase

Confirm the product meets BABA sourcing standards with the manufacturer before ordering.



Collect Manufacturer Letter / Certificate

Obtain a signed letter or BABA certificate on manufacturer letterhead (Document 1).



Retain the Purchase Order

Keep the PO or equivalent showing product was purchased from the verified supplier (Document 2).



Retain Proof of Payment

Retain invoice, cancelled check, ACH, or bank statement matching the PO (Document 3).



Flow BABA into all contracts

Include BABA requirements in every subcontract, subaward, and purchase order.



Contact FAO if a waiver is needed

Do not substitute non-compliant materials without DOI waiver approval.



Key Contacts & Resources

DOI Buy America Information

<https://www.doi.gov/grants/buyamerica>

DOI General Applicability Waivers

<https://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>

OMB Final Guidance (2 CFR Part 184)

88 FR 57750 (Aug 23, 2023)

OMB Made in America Office

<https://www.whitehouse.gov/omb/management/office-federal-procurement-policy/made-in-america/>

Questions?

Contact your Financial Assistance Officer (FAO) as listed in your Notice of Award.
Send copies of all waiver requests to your Financial Assistance Officer Representative.