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

Adopted August 1, 2026

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.

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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. Appendix A 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 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. **Appendix J** is a Pre-Application Planning Checklist built for exactly this purpose.

1.4 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.

1.5 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 Appendix E.)
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 Appendix H.)

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 http://www.arc.gov/BuyAmericaGuidelines. 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 http://www.arc.gov/BuyAmericaGuidelines. 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:

- **Appendix D** — Sample contract clause / contractor bid language
- **Appendix E** — Subrecipient's certification of compliance

- **Appendix F** — Contractor's certification of compliance
- **Appendix G** — Subcontractor's certification of compliance
- **Appendix H** — 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 Appendix D bid language in all specifications, solicitations, and contracts.
5. Require the compliance certifications (Appendices E–H) 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 (Appendix B). 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 Appendix I 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 **Appendix B**, 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 **Appendix C** 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; **Appendix K** 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. RSBAs 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.

Appendix A. Frequently Asked Questions

1. What is BABA?

The Build America, Buy America Act, part of the Infrastructure Investment and Jobs Act (2021). It requires that iron, steel, manufactured products, and construction materials used in federally funded infrastructure projects be produced in the United States, unless a waiver applies.

2. Does BABA apply to my ARC grant?

BABA applies to ARC grants for infrastructure awarded since May 14, 2022. However, the new guidance applies to ARC construction (infrastructure) awards approved by the Federal Co-Chair on or after August 1, 2026. Non-construction awards and awards approved earlier follow different rules. If unsure, ask your RSBA.

3. What has to be "produced in the United States"?

It depends on the category. Iron and steel: all processes from initial melting through coating occur in the U.S. Manufactured products: made in the U.S. and U.S. component cost is more than 55% of total component cost. Construction materials: all manufacturing processes occur in the U.S.

4. What is not covered by BABA?

Tools and temporary items brought to the site and removed later (like scaffolding), and equipment or furnishings not permanently part of the project (movable chairs, desks, portable computers). Also cement and aggregates (Section 70917(c) materials) are generally excluded. BABA may also be waived under certain conditions (see Q8-Q13).

5. Who is responsible for compliance?

You, the grantee, hold primary responsibility. BABA duties flow down to your subrecipients, contractors, subcontractors, suppliers, and manufacturers through the terms in your subawards and contracts.

6. What is "flow-down"?

Because ARC has no direct contract with your contractors or suppliers, you must include the ARC BABA term and condition in every subaward, contract, subcontract, and purchase order so the requirement reaches everyone.

7. How do I prove compliance?

Keep documentation: supplier and manufacturer certifications, invoices, and records of country of origin and manufacturing location. Collect the certifications in Appendices E–H and retain them for audits.

8. What if a domestic product is not available?

You may request a waiver. First do market research to show a good-faith effort to find domestic sources (Appendix C), then submit the ARC BABA Waiver Request Form

(Appendix B) through your RSBA. Absent a waiver, the products cannot be incorporated into the project.

9. What are the three waiver types?

Public interest, nonavailability, and unreasonable cost (using domestic materials would raise total project cost by more than 25%).

10. Who approves waivers?

ARC issues the waiver, after a public comment period (at least 15 days) and review by OMB's Made in America Office. The MIAO approves; it does not issue ARC waivers.

11. Can a waiver cover money already spent?

No. A waiver only applies to costs incurred after its effective date. Request waivers early.

12. Does a waiver from another agency cover my ARC project?

No, unless ARC formally adopted it in writing. Even on jointly funded projects, you must meet ARC's requirements and use ARC's waiver process.

13. How do trade agreements affect BABA?

BABA has no blanket exemption for trade-agreement countries (unlike the Buy American Act). Foreign materials remain subject to BABA unless an approved waiver applies. You should consult the ARC BABA website for waivers that apply.

14. Does BABA apply to disaster or emergency work?

Certain Stafford Act disaster and emergency assistance is excluded. Always confirm with your Basic Agency before assuming BABA does not apply.

15. What counts as a manufactured product versus a construction material?

If listed materials (like glass or plastic) are combined through manufacturing into a distinct product with a specific function, it is a manufactured product. A single listed material on its own (like plate glass) is a construction material.

16. Are kits treated as one product?

Yes. A kit assembled on site can be a single manufactured product if it was manufactured before delivery and functions as one unified product. On-site assembly labor and transportation are not counted in the component-cost test.

17. How long must I keep records?

Generally three years from the final expenditure report under the Uniform Guidance, longer if audit, litigation, or other circumstances apply.

18. What happens if I do not comply?

Consequences range from repayment and disallowed costs to withheld or terminated funding, and in serious cases False Claims Act liability or suspension and debarment.

Appendix B. ARC BABA Waiver Request Form

Submit this form to ARC through the RSBA administering your grant. Complete every section to the greatest extent practicable; incomplete requests may be returned. Attach market research and supporting documentation.

Section 1 — Recipient and project information

- Recipient (grantee) name:
- Unique Entity Identifier (UEI):
- Point of contact (name, title, phone, email):
- RSBA / Basic Agency administering the grant:
- ARC program name and grant/award number:
- ARC funding amount and total project cost:
- Total estimated infrastructure expenditures (ARC and all other funds):
- Project title, description, and location:

Section 2 — Waiver type requested

Check one:

- [ ] Nonavailability — product not produced in the U.S. in sufficient/reasonably available quantity or satisfactory quality.
- [ ] Unreasonable cost — domestic materials would raise total project cost by more than 25%.
- [ ] Public interest — applying the preference is inconsistent with the public interest.

Section 3 — Items to be waived

List each item requested for waiver. Add rows as needed.

Item / description	Category (iron-steel / mfg / material)	Est. cost	Country of origin	PSC & NAICS codes

Section 4 — Justification

Explain in detail why the waiver is needed and why compliant domestic materials cannot be used. Tie your explanation to the waiver type checked in Section 2.

____

____

Section 5 — Market research and efforts to avoid a waiver

Describe the market research performed: who conducted it, when, which sources and methods were used, and what you found. Attach documentation (quotes, correspondence, catalogs, search results).

____

____

Section 6 — Cost analysis (unreasonable-cost requests)

Provide comparable domestic and foreign price quotes for products meeting the same specification, state your assumptions, and show the effect on total project cost relative to the 25% threshold.

Item	Domestic price	Foreign price	Difference	Effect on total project cost

Section 7 — Anticipated impact if no waiver is issued

____

____

Section 8 — Proposed waiver scope and duration

State the specific products, quantities, and time period requested, and any conditions you propose.

____

Section 9 — Certification

I certify that the information in this request is true and correct to the best of my knowledge, and that the recipient made a good-faith effort to solicit bids for domestic products, as documented above.

Signature: ________________________________ Date: _____________

Printed name and title: ____

Appendix C. Market Research Guide

Market research is your organized effort to learn whether a compliant domestic product exists that meets your technical needs at a reasonable cost and availability. Good research helps you comply in the first place and, when needed, supports a waiver request. Scale your effort to the size and complexity of the purchase.

Suggested market-research activities

1. Define the technical requirements and specifications the product must meet.
2. Identify potential domestic manufacturers and suppliers.
3. Contact at least three reliable domestic manufacturers or distributors.
4. Request quotes (price, quantity, lead time) from each source.
5. Ask each source where the product is manufactured and about domestic component content.
6. Review manufacturer catalogs, specification sheets, and product literature.
7. Search industry directories and databases (e.g. trade registries).
8. Contact relevant trade associations for lists of domestic producers.
9. Review federal or state purchasing schedules and cooperative contracts where relevant.
10. Check whether an existing general applicability waiver already covers the product.
11. Consider functionally equivalent domestic alternatives that meet the specification.
12. Consider design or schedule adjustments (lead time, resequencing) that avoid a waiver.
13. Document every contact: who, when, method, and result.
14. Retain all supporting materials (emails, quotes, screenshots) in the project file.

Best practices

- Start market research early — during design and pre-application — not after bids arrive.
- For nonavailability, show a genuine, documented search, not a bare assertion.
- For unreasonable cost, compare like-for-like products and measure the impact on total project cost against the 25% threshold, not the cost of a single item.
- Keep records organized and audit-ready; the documentation is the basis of any waiver.

Appendix D. Sample Contract Clause and Bid Language

In addition to the ARC BABA terms and conditions, include language like the following in specifications, solicitations, bid documents, contracts, subcontracts, and purchase orders so BABA flows down to all parties. Adapt to your project and legal review.

Sample BABA compliance clause

Build America, Buy America. This project is funded in whole or in part by an award from the Appalachian Regional Commission (ARC) and is subject to the Build America, Buy America Act (Public Law 117-58, sections 70901–70927) and the ARC BABA Guidance. The Contractor agrees that all iron, steel, manufactured products, and construction materials used in the project must be produced in the United States, unless a waiver has been issued by ARC and applies to the item.

Definitions of "produced in the United States" for each category are incorporated by reference from the ARC Buy America guidelines. The Contractor shall flow down these requirements to all subcontractors, suppliers, and manufacturers, shall provide certifications of compliance in the forms required by the Recipient, and shall maintain and produce upon request documentation demonstrating compliance, including country of origin and place of manufacture.

The Contractor shall not incorporate any noncompliant iron, steel, manufactured product, or construction material into the project without a written ARC waiver covering that item. Failure to comply may result in rejection of materials, cost disallowance, and other remedies under the contract and applicable law.

Sample bid certification language

"By submitting this bid, the bidder certifies that it will comply with the Build America, Buy America requirements set forth in the solicitation, will flow those requirements down to all subcontractors and suppliers, and will provide the required certifications and documentation demonstrating that all covered iron, steel, manufactured products, and construction materials are produced in the United States or covered by an applicable ARC waiver."

Appendix E. Subrecipient's Certification of Compliance

To be completed by each subrecipient and delivered to the grantee and the RSBA.

Project name: ______________________________ Award/grant number: _____________

Subrecipient name: ________________________ UEI: ____________________________

The undersigned subrecipient certifies that:

1. All iron, steel, manufactured products, and construction materials incorporated into the project under this subaward are produced in the United States as defined by BABA and the ARC BABA Guidance, except where a written ARC waiver applies.
2. The subrecipient has flowed down all BABA requirements to its contractors, subcontractors, suppliers, and manufacturers.
3. The subrecipient has obtained and retained certifications and documentation of compliance and will produce them upon request.
4. The information provided is true and correct to the best of the subrecipient's knowledge.

Signature: ________________________________ Date: _____________

Printed name and title: ____

Appendix F. Contractor's Certification of Compliance*

To be completed by the prime contractor and delivered to the grantee and the RSBA with each payment application involving covered materials, and before closeout.

Project name: ______________________________ Contract number: _______________

Contractor name: __________________________ UEI/DUNS: ____________________

The undersigned contractor certifies that:

1. All iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States as defined by BABA and the ARC BABA Guidance, except where a written ARC waiver applies (identify any waiver below).
2. BABA requirements have been flowed down to all subcontractors, suppliers, and manufacturers.
3. Supporting documentation (invoices, mill certifications, manufacturer statements, country-of-origin records) is maintained and available on request.
4. The information provided is true and correct to the best of the contractor's knowledge, and the contractor understands that false statements may result in liability under the False Claims Act and other law.

Waiver(s) relied upon (if any): ____

Signature: ________________________________ Date: _____________

Printed name and title: ____

* Consult your RSBA on how to best adapt this certificate to your specific project.

Appendix G. Subcontractor's Certification of Compliance*

To be completed by each subcontractor and delivered to the prime contractor, Grantee, and the RSBA.

Project name: ______________________________ Subcontract number: ___________

Subcontractor name: ______________________ UEI/DUNS: ____________________

The undersigned subcontractor certifies that:

1. All iron, steel, manufactured products, and construction materials it furnishes or installs on the project are produced in the United States as defined by BABA and the ARC BABA Guidance, except where a written ARC waiver applies.
2. It has flowed down BABA requirements to its own lower-tier subcontractors and suppliers.
3. It maintains supporting documentation and will provide it upon request.
4. The information provided is true and correct to the best of its knowledge.

Signature: _______________________________ Date: _____________

Printed name and title: ____

* Consult your RSBA on how to best adapt this certificate to your specific project.

Appendix H. Supplier's / Manufacturer's Certification of Compliance*

To be completed by each supplier or manufacturer of covered materials and delivered to the purchasing contractor or recipient.

Project name (if known): ___________________ Purchase order number: _________

Supplier/manufacturer name: _______________ UEI/DUNS: _____________________

For each product supplied, the undersigned certifies the following (attach a product list as needed):

Product	Category	Place of manufacture	Meets BABA standard? (Y/N)	Waiver # (if any)

The undersigned certifies that the above is true and correct, that (for manufactured products) the U.S. component cost exceeds 55% of total component cost where so indicated, and that supporting records are available on request.

Signature: _________________________________ Date: ______________

Printed name and title: ____

* Consult your RSBA on best way to adapt this certificate to your project, including application to mills when incorporating iron and steel.

Appendix I. Cost of Components — Sample Calculation

This example shows how to test whether a manufactured product meets the "more than 55%" domestic component-cost standard. The product below is manufactured in the United States; the question is whether its U.S. components exceed 55% of total component cost.

Step 1 — List all components and their costs

Component	Origin	Cost	Domestic?
Steel housing	United States	$40,000	Yes
Motor assembly	United States	$34,000	Yes
Control board	United States	$28,000	Yes
Wiring & fasteners	United States	$22,000	Yes
Sensor module	Imported	$16,000	No
Display panel	Imported	$10,000	No
Total component cost		$150,000	

Step 2 — Add up domestic component cost

Domestic components: $40,000 + $34,000 + $28,000 + $22,000 = $124,000.

Step 3 — Divide by total component cost

$124,000 ÷ $150,000 = 0.8267, or **82.67%**.

Step 4 — Compare to the 55% threshold

82.67% is greater than 55%, so this manufactured product **meets** the BABA domestic-content standard (assuming it was manufactured in the United States).

Reminders for the calculation

Count only component costs. Do not count the cost of manufacturing the final product itself.

For purchased components, use acquisition cost plus transportation to the place of incorporation, plus any duty.

For self-made components, use manufacturing cost plus allocable overhead, but exclude profit.

For kits, do not count on-site assembly labor or transportation to the site.

Appendix J. Pre-Application Planning Checklist

Use this checklist while you design your project and before you apply, so BABA is built into your design, budget, and schedule from the start.

Step	Action	Done?
1	Identify all iron, steel, manufactured products, and construction materials the project will require.	[ ]
2	Classify each item into one category (iron/steel, manufactured product, construction material, or Section 70917(c) material).	[ ]
3	For each item, identify potential U.S. sources and confirm availability, quality, lead time, and price (early market research — see Appendix C).	[ ]
4	Flag items that may be hard to source domestically and check whether a general applicability waiver already covers them.	[ ]
5	Estimate the true cost of compliance (material price, redesign, supplier research, paperwork, longer lead times) and build it into the budget.	[ ]
6	Adjust design, specifications, or schedule where that avoids the need for a waiver.	[ ]
7	If a waiver still looks necessary, begin assembling documentation and plan to submit the ARC BABA Waiver Request Form (Appendix B) through your RSBA early.	[ ]

Appendix K. Comparison of Domestic-Content Laws

This chart compares BABA with the other major domestic-content regimes. Only BABA applies to ARC financial assistance; the others are shown for context. A project subject to more than one law must be analyzed separately under each.

Feature	BABA (2 CFR 184)	Buy American Act (1933)	FTA Buy America	IRA Domestic Content
Legal basis	IIJA §§70901–70927; 2 CFR 184	41 U.S.C. 8301–8305	49 U.S.C. 5323(j); 49 CFR 661	IRC §§45, 48 (as amended by IRA)
Applies to	Federal financial assistance for infrastructure	Direct federal procurement	FTA-funded transit projects	Clean-energy tax credit projects
Categories	Iron/steel; manufactured products; construction materials	End products (and construction materials for contracts)	Steel, iron, manufactured products	Steel/iron; manufactured products
Iron/steel standard	All processes, melting through coating, in U.S.	Manufactured in U.S.	All manufacturing in U.S.	100% (steel/iron) for bonus
Manufactured-products test	Made in U.S. + >55% U.S. component cost	>60% U.S. component cost (2024+)	Made in U.S. + >60% component + final assembly	Adjusted percentage (rising over time)
Construction materials	Covered (all processes in U.S.)	Limited	Added via 2 CFR 184	Not applicable
Waivers	Public interest; nonavailability; unreasonable cost	Public interest; nonavailability; unreasonable cost; Trade Agreements Act	Public interest; nonavailability; cost	None (voluntary bonus credit)
Trade-agreement exception	No blanket exception	Yes (Trade Agreements Act)	No	No

Appendix L. BABA Bill of Materials (Sample)

A BABA Bill of Materials (BOM) is a running list of every covered item in the project, its category, its origin, and how compliance is shown. Maintaining a BOM helps you track compliance during construction and makes audits far easier. Below is a sample; adapt the columns to your project.

Item	Category	Supplier	Place of manufacture	Compliance basis	Doc on file?
Structural steel beams	Iron/steel	Example Steel Co.	Ohio, USA	Mill certification	[ ]
Ductile iron pipe	Iron/steel	Example Foundry	Alabama, USA	Mill certification	[ ]
Packaged pump station	Manufactured	Example Pumps Inc.	Texas, USA	Component-cost worksheet (>55%)	[ ]
PVC conduit	Construction material	Example Plastics	Georgia, USA	Manufacturer certification	[ ]
Plate glass	Construction material	Example Glass	Pennsylvania, USA	Manufacturer certification	[ ]
Switchgear (waived)	Manufactured	Example Electric	Imported	ARC waiver # 2026-XX	[ ]

Suggested workflow

1. Build the BOM from your design documents before procurement, listing every covered item.
2. As you select suppliers, record origin and the compliance basis for each item.
3. Collect the matching certification (Appendices E–H) or waiver reference and mark it on file.
4. Update the BOM as materials arrive and are incorporated; reconcile against invoices and delivery records.
5. Provide the completed BOM and supporting documents to the RSBA at monitoring and retain for audit.