

This Clean Water State Revolving Fund (CWSRF) funded project must comply with the requirements of the Build America, Buy America Act (included within the 2021 Infrastructure Investment and Jobs Act, aka the Bipartisan Infrastructure Law). The BABA requirement applies to all the iron, steel, manufactured products, and construction materials used in the project, which must be produced in the United States. The effective date of implementation is May 14, 2022.

Information on the BABA requirements can be found here:

<https://www.epa.gov/cwsrf/build-america-buy-america-baba>

The Infrastructure Investment and Jobs Act can be found here:

<https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>

Example Build America, Buy America (BABA) Act Construction Contract Language

ALL CONSTRUCTION CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE BABA REQUIREMENTS. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN A PROJECT'S CONSTRUCTION CONTRACT. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the _____ (“Owner”) and the _____ (the “Funding Authority”) that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as “Build America, Buy America,” that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”) including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and Funding Authority (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner or the Funding Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Owner or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with the Funding Authority, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the Funding Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Funding Authority.

Additionally, by signing payment application and recommending payment, Contractor certifies they have reviewed documentation for all products and materials submitted for payment, and the certifications are sufficient to demonstrate compliance with Build America, Buy America Act requirements.

Following Information from Funding Source Terms & Conditions:

Buy America Preference. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project 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, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
- 3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below.

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. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Categorization of articles, materials, and supplies. An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

Application of the Buy America Preference by category. An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

Determining the cost of components for manufactured products. In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, 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), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

Construction material standards. The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

- 1) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- 2) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- 3) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- 4) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for nonferrous metals, plastic and polymer-based products, or any others.
- 5) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- 6) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
- 7) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- 8) Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Waivers. When supported by rationale provided in IIJA §70914, the recipient may submit a waiver request in writing to EPA. Recipients should request guidance on the submission instructions of an EPA waiver request from the EPA Project Officer for this agreement. A list of approved EPA waivers is available on [EPA Build America, Buy America \(BABA\)](#). For CWSRF project approved waivers, see De minimis and Minor (Ferrous) Components of Iron and Steel Products.

EPA may waive the application of the Buy America Preference when it has determined that one of the following exceptions applies:

- 1) applying the Buy America Preference would be inconsistent with the public interest;
- 2) 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
- 3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

For legal definitions and sourcing requirements, the recipient must consult the [EPA Build America, Buy America \(BABA\)](#) website, [2 CFR Part 184](#), and the [Office of Management and Budget's \(OMB\) Memorandum M-24-02 Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#)

The following information is provided as a sample letter of certification for **BABA** compliance for Non-Ferrous **Construction Materials**. **Documentation must be provided on company letterhead.**

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the non-ferrous construction materials shipped/provided to the subject project are in full compliance with the Buy America, Build America Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA's State Revolving Fund Programs (if applicable). Each manufacturing process required for the manufacture of the construction material and the inputs of the construction material occurred in the United States, per [OMB Guidance 2 CFR 184.6](#). Detailed standard provided below.

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

1. XXXX
2. XXXX
3. XXXX

Such product manufacturing process(es) took place at the following location(s): (City and State)

1. XXXX
2. XXXX
3. XXXX

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative

Printed name of company representative

Professional title of company representative

Email address

Phone number

The following information is provided as a sample letter of certification for **BABA** compliance for **Iron/Steel Products**. **Documentation must be provided on company letterhead.**

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the (initial melting, reheating, refining, forming, rolling, drawing, finishing, fabricating, coating, assembly) of the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel Requirement (AIS) (if applicable), and for the iron/steel category of products in the Build America, Buy America Act requirement, as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA's State Revolving Fund Programs (if applicable).

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

- 1.Xxxx
- 2.Xxxx
- 3.Xxxx

Such product manufacturing process(es) took place at the following location: (City and State) Initial Melting location: (City and State) Bending, Cutting, etc location: (City and State; list out each step taken by a different manufacturer or producer)

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative

Printed name of company representative

Professional title of company representative

Email address

Phone number

The following information is provided as a sample letter of certification for **BABA** compliance for **Manufactured Products**. **Documentation must be provided on company letterhead.**

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the manufactured product(s) shipped/provided to the subject project is/are in full compliance with the Build America, Buy America Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA's State Revolving Fund Programs (if applicable). This/these product(s) meet(s) the 55 percent component cost test, where the cost of components that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components; and final manufacturing occurred in the United States.

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

1. XXXX
2. XXXX
3. XXXX

Final product manufacturing process(es) took place at the following location(s): (City and State)

1. XXXX
2. XXXX
3. XXXX

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative


Printed name of company representative

Professional title of company representative

Email address

Phone number

Example BABA Certification Letter, must include reference to Build America Buy America Act and the BABA Category



MINAS MORGUL

August 29, 2017
Gondor Supply Co.
3477 One Ring Ln.
Fort Tirth, IA 50501

RE: Job Name: Saruman Contracting
Project#: Hobbiton Water Treatment Plant, The Shire, WY
Order Type: Submittal

<u>QUANTITY</u>	<u>DESCRIPTION</u>
30	8550350 66-S VLV BOX 26T 36B 1.5 WTR

Dear Valued Partner:

We hereby certify that the iron used to make the construction castings manufactured by MMS for above referenced project is in full compliance with ASTM A48, Class 35B and AASHTO M105 for iron castings and ASTM A536, Grade 70-50-05 for ductile iron castings. Thank you for specifying and using products manufactured by Minas Morgul Steel, Inc.

The above listed castings are melted and manufactured 100% in the United States of America at our foundries in Moria, OK and Isengard, MI. These castings comply with the applicable provisions of the Code of Federal Regulations 23 CFR 635.410 BUY AMERICA Requirements.

We also certify that the above listed products supplied to the subject project are in full compliance with the Build America Buy America Act requirements, as an iron and steel product, as mandated in EPA's State Revolving Fund Programs.

Meriadoc Brandybuck
Product Quality Manager
Minas Morgul Steel, Inc.

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Mordor, Middle Earth
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Material Certification

Key Elements:

- ✓ Project reference
- ✓ Specific list of products
- ✓ Location of manufacturing (city and state)
- ✓ Dom Pref. requirement reference **(+BABA Category Reference)**
- ✓ Signature of representative