

**U.S. Department of the Interior
Orphaned Wells Program Office
State Orphaned Wells Program**

**Compliance with Build America, Buy America Act Provisions
October 2025**

I. BACKGROUND

Section 40601 of the Infrastructure Investment and Jobs Act ([IIJA](#)), codified at 42 U.S.C. § 15907, appropriated funding to the Department of the Interior (DOI) to establish Federal, State and Tribal orphaned wells programs. The Orphaned Wells Program Office ([OWPO](#)) is responsible for carrying out the Secretary of the Interior’s responsibilities under Section 40601 of the IIJA.

IIJA-funded projects are subject to the Build America, Buy America Act ([BABA](#)), which was enacted as part of the IIJA on November 15, 2021. BABA requires the head of each Federal agency to ensure that “none of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States” (Pub. L. No. 117-58 § 70914).

On August 23, 2023, the Office of Management and Budget revised its “Guidance for Grants and Agreements” ([88 FR 57750](#)) to provide further guidance on implementing BABA and improving Federal financial assistance management and transparency. The revised guidance took effect on October 23, 2023. BABA’s implementing regulations are found at [2 CFR Part 184](#). Recipients must always follow applicable laws and the terms and conditions of each grant award.

BABA allows the head of each Federal agency to waive requirements under certain circumstances. On February 21, 2023, DOI approved two BABA waivers, both of which expire on February 20, 2028, and are relevant to the State Orphaned Wells Program grant funding.

- The first waiver applies to [small grants](#) that do not meet the current Simplified Acquisition Threshold of \$250,000 and are not expected to exceed the Simplified Acquisition Threshold for the life of the grant.
- The second waiver applies to [de minimis](#) purchases for otherwise covered infrastructure projects, totaling up to 5 percent of the total applicable project costs, not to exceed a dollar amount of \$1,000,000.

II. IMPLEMENTATION CHECKLIST

The following checklist will help State Grant Recipients determine if BABA sourcing requirements apply to materials used in projects to plug and remediate orphaned oil and gas wells and well sites.

Detailed BABA sourcing requirements for iron or steel products, manufactured products, and construction materials (that permanently become a part of the orphaned oil and gas plugging and remediation project or project site) include:

- [Iron or steel products](#): All manufacturing processes (from melting through coating) must occur entirely within the U.S.
- [Manufactured Products](#):
 - More than **55% of the total cost of components** must be U.S.-sourced.
 - Final manufacturing must occur in the U.S.
- [Construction materials](#): All manufacturing processes from the initial production of raw materials to the final finishing must occur entirely within the U.S.

BABA sourcing requirements do not apply when:

- The material, item, or circumstances are covered by an Approved DOI General Applicability Waiver;
- The material or item is temporarily brought to the site and removed before completion of the infrastructure project (i.e. tools, equipment, and furnishings not permanently affixed to the project or project site); or
- The material or item is a [Section 70917\(c\)](#) material: cement and cementitious materials; aggregates such as stone, sand or gravel; or aggregate binding agents or additives.

What must financial assistance recipients do to comply?

- Follow the applicable sourcing requirements;
- Include the BABA Requirements in all subawards, contracts, and purchase orders for the work performed, or products supplied under the grant; and
- Retain and make available upon request the relevant documentation to show compliance with BABA sourcing requirements.

III. FREQUENTLY ASKED QUESTIONS

Do BABA Sourcing Requirements apply to contractors, subcontractors and subrecipients?

Yes, recipients of financial assistance must include the BABA Requirements in all subawards, contracts, subcontracts, and purchase orders associated with the work performed, or products supplied using Federal funds and program income.

When can BABA Sourcing Requirements be waived?

In accordance with BABA [Section 70914 \(b\)](#), the head of an agency (in this case DOI) may waive the Buy America preference under an infrastructure program if the head of the agency finds that:

1. Applying the Buy America preference would be inconsistent with the public interest (a “Public Interest Waiver”);

2. 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 (a “Non-Availability Waiver”); 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 (an “Unreasonable Cost Waiver”).

How do I seek a BABA Waiver?

When necessary, recipients may apply for, and the agency (DOI), may grant a waiver from these requirements. Information on the process for requesting a waiver from these requirements can be found at <https://www.doi.gov/grants/buyamerica>.

A request to waive the application of the BABA Requirements must be in writing. While information on submitting a waiver request is available on the DOI website, Recipients must contact their Financial Assistance Officer (FAO) for specific instructions on the format, contents, and supporting materials required for any waiver request. Proposed waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Office of Management and Budget (OMB) Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at the Approved DOI General Applicability Waivers website located at <https://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>.

Who do I contact to seek additional clarification or ask specific questions?

State Grant Recipients should contact the Financial Assistance Officer (FAO) listed in their most recent Notice of Award and send a copy of the request to their Financial Assistance Officer Representative. As with any request for information, please provide the specific details or circumstances so that the FAO may provide you with the most accurate information and guidance.

The information provided in this document is intended to be general in nature and may not address every situation that may arise regarding compliance with BABA requirements.