



RUS Buy American Requirements 7 CFR 1787 or IJA Build America Buy America Act

USDA RUS ReConnect Program

RUS Buy American Requirements

7 CFR 1787



“RUS Buy American”: Origin of the Preference

- Rural Electrification Act of 1936
- “...to the extent practicable and the cost of which is not unreasonable, that RUS awardees use loan funds only for such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country, substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States or any eligible country.”
- Codification in 7 CFR 1787 (2018)

7 CFR 1787 Domestic Preference Requirements:

- Funding allowed only for unmanufactured articles, materials, and supplies mined or produced in the US or an eligible country, and
- Funding allowed only for “domestic” sourced manufactured products: those assembled in the US or an eligible country with 50% or more of value of the component parts manufactured in an eligible country.
- Eligible countries are determined by the US Trade Representative.

7 CFR 1787 RUS Buy American Requirements

- Eligible Countries

What is an “Eligible Country”? (7 CFR 1787.5)

- Those countries that have specific trade agreements with the U.S. and are designated by the U.S. Trade Representative.
- For a full list of Eligible Countries, go to:
http://www.rd.usda.gov/files/UEP_Engineering_EligibleCountries.pdf

7 CFR 1787 RUS Buy American Requirements

- Eligible Countries

- The Office of the United States Trade Representative has revised the list of countries designated as “eligible countries” for the Telecommunications Program of the Rural Utilities Service. The revision adds countries to the prior list that included Canada, Israel, and Mexico, as shown in the table below. The new list reflects the March 17, 2014, Federal Register Notice, Agreement on Government Procurement: Effective Date of Amendments, published by the Office of the United States trade Representative.

Canada	Iceland	Mexico
Chinese Taipei	Israel	Norway
European Union	Japan	Singapore
Hong Kong	Liechtenstein	

7 CFR 1787 Buy American Waivers

- 1787.11 Cost differential
- 1787.12 Non-availability or shortages, or
- 1787.13 Public Interest or Practicality

Awardee is required to demonstrate compliance!

7 CFR 1787.11 COST DIFFERENTIAL

- The cost between the nondomestic product and domestic product is unreasonable;
- The non-domestic product must provide 6% or more price reduction below the lowest domestic price found.
- Awardee must show diligence seeking a domestic manufacturer of functionally equivalent equipment. Typically, multiple competitive price quotations showing the cost differential

7 CFR 1787.12 NON-AVAILABILITY OR SHORTAGES

- There is a non-availability of domestic products;
- Awardee must present documentation in the form of quotations of delivery or lead-times from the non-domestic supplier and multiple domestic suppliers.

7 CFR 1787.13 PUBLIC INTEREST OR PRACTICALITY

- It is not in the public interest or impractical for the RUS Borrower to purchase a domestic product.
- Required showing how incorporating the domestic product is incompatible with existing, significant capital infrastructure or critical software already in use. Hardship or negative impacts on project must be clearly shown.
- Awardees must provide "...written, detailed explanation" supporting their request (§1787.10).

RUS Technical Standards, too.....

- For those products for which RUS retains technical standards—fiber optic cable especially—a statement from project Professional Engineer certifying compliance with the accepted standard of the chosen product to be submitted.
- Standards for backbone, feeder, and distribution plant systems: RUS Bulletin 1753F-601a (previously PE-90a)
- Standards for service entry fiber: RUS Bulletin 1753F-601b (PE-90b)
- Various equipment standards exist under CFR 1755.

Some Important Details:

- An RUS Borrower may only use loan funds to purchase a nondomestic product if a waiver pursuant to § 1787.10 has been received by RUS. Please keep in mind that the contract is an agreement between the RUS Borrower and with the vendor or contractor. Should the Administrator deny the waiver request, the RUS Borrower must use its own funds for the expenditures.
- Waiver approval must be obtained **PRIOR** to signing a contract with a supplier (§1787.8).
- For all products submitted under a waiver request, certification is required from the manufacturer that those products conform to the McCain Defense Authorization Act. Also referred to as the NDAA. Per 2 CFR 200.216 Prohibition on certain Telecommunication and video surveillance services or equipment.

RUS Buy American Requirements

IIJA Build America Buy America Act



What is the Build America, Buy America Act (BABAA)?

➤ Enacted as part of the **Infrastructure Investment and Jobs Act** (Pub. L. No. 117-58) signed by President Joseph R. Biden Jr. on November 15, 2021.

- ✓ Strengthens “Made in America” laws
- ✓ Bolster America’s industrial base
- ✓ Protects national security
- ✓ Support high-paying jobs

IIJA Build America Buy America Act

RUS grant, loan, and loan guarantee applications in the telecommunications program will be evaluated and determine whether:

1. the applicant is a non-Federal entity,
 2. the project to be funded is an infrastructure project, and
 3. the activity is a defined project activity.
- If the application meets all three criteria, then the project is subject to Build America Buy America Act.

IJA Build America Buy America Act

Definitions

Non- Federal Entities defined in 2 CFR 200.1:

“State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.”

Infrastructure:

- * Roads, Highways, and bridges
- * Public Transportation
- * Dams, ports, harbors and other maritime facilities
- * Intercity passenger and freight railroads
- * Freight and intermodal facilities
- * Airport
- * Buildings and Real Property
- * Water systems, including drinking water & waste systems
- * Electrical transmission facilities & systems, including electric vehicle (EV) charging stations
- * Utilities
- * Broadband infrastructure; and

Project Activity:

- Construction, alteration, maintenance, or repair of infrastructure in the United States.

How IIJA BABAA changes handling of waiver requests for non-Federal entities

- Cost differential raised from 6% to 25% for a waiver.
- Raises component content of manufactured products from 50% to 55%. Higher in later years.
- After RUS determines waiver request is eligible, the request and justification are posted on RUS and Made in America Office (MIAO) website for 15 days for public comment.
- Request & reply comments are submitted to MIAO (OMB) for review.

IIJA Build America Buy America Act

- Reconnect Round 3 Non-Federal awardees will be subject to Build America Buy America Act.
- All other RUS awardees are subject to RUS's existing Buy American requirements codified since 2018 in 7 CFR Part 1787.

IIJA Build America Buy America Act

(RUS/Rural Development waivers will be limited, targeted, and where appropriate, conditional)

Waivers may be requested for:

- (1) *Nonavailability*. Iron, Steel or relevant manufactured goods or construction materials are not produced or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (2) *Unreasonable cost*. The cost of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25%.
- (3) *Inconsistent with public interest*. Application of these restrictions would be inconsistent with the public interest.

IIJA Build America Buy America Act

(RUS/Rural Development waivers will be limited, targeted, and where appropriate, conditional)

Understand what the waiver process entails and inform suppliers

- (1) Your waiver request will be reviewed in RUS/RD and at the USDA-Department Levels.
- (2) The Office of Management & Budget (OMB) will review all supported waivers as well & provide comments.
- (3) Your supported waiver could be adjusted and will be posted on USDA public website for 15 days, (your request is not final yet).
- (4) Public sources can comment and/or offer domestic solutions to your Domestic Sourcing Challenge.
- (5) If solutions can be considered, you might be able to comply with BABAA.
- (6) If no solutions meet your project requirements, the final **Approved Waiver** will be issued and posted again for the public transparency.

IIJA Build America Buy America Act

If you believe your project may qualify for a waiver, contact your Agency representative

Information specific to the material, manufactured product, or construction material for which the waiver is sought. Most of this information is already available as part of your planning, design phase, or bid documents.

That information should include, as appropriate, the item description, price, the date required, the locations of the project, and the name and address of the proposed supplier. The list of required waiver information is available at [USDA Buy America Waivers for Federal Financial Assistance | USDA](#).

Critical to a waiver request is a detailed written justification for the use of the non-domestic product. You will need to show evidence of a good-faith effort to procure a domestically produced product.

IIJA Build America Buy America Act De Minimis, Small Grants & Minor Components Waiver

- 1) De minimis (setting a threshold of 5% of project costs up to a maximum of \$1,000,000)
- 2) Small grants (awards below the Simplified Acquisition Threshold which is currently \$250,000)
And includes Loans in the details of the language
- 3) Minor components

See this waiver here: <https://www.usda.gov/sites/default/files/documents/usda-departmentwide-de-minimis-small-grants-minor-components-waiver-final-approved-09132022.pdf>

Differences between the 7 CFR 1787 Buy American Requirement and the Build America, Buy America Act

Topic	7 CFR 1787	BABA Act
Cost Differential:	6%	25%
Domestic Content Requirement:	50%	55%
Iron & Steel:	No requirement	Required to be considered.
Public Disclosure:	No requirement	Required (15 days)

Decision rest with RUS to reject or grant waivers!

Because information is subject to change, always consult official program regulations or contact your local Rural Development office or Agency representative for help.

This presentation does not replace the law as established in the Infrastructure Investment and Jobs Act (P.L. 117-58) , or any current, or future federal regulations.

QUESTIONS & ANSWERS





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