

Grid Resilience Grant program

BABA Compliance and Waiver Procedures

This document explains how the Oregon Department of Energy (ODOE) works with subrecipients of Grid Resilience grants to meet Build America, Buy America (BABA) requirements. The five steps cover compliance expectations, waiver options, documentation, and monitoring activities.

1. Initial Guidance and Compliance Review

A. Kickoff Meeting

After signing a Performance Agreement, ODOE meets with each subrecipient to:

1. Explain federal compliance requirements, including procurement rules, prevailing wage, and BABA.
2. Review BABA documentation needs (manufacturer certificates) and waiver options.
3. Ask subrecipients to determine whether their project can meet BABA rules or needs a waiver.

B. Subrecipient Response (within 60 days of kickoff)

Subrecipients must give ODOE a list of all materials covered by BABA and indicate whether:

1. The project can fully comply,
2. One or more waivers will be needed,
3. The project scope must change to comply, or
4. More time is needed (up to an additional two weeks).

If a waiver is needed, ODOE's Compliance Specialist will help prepare the request.

2. Waiver Types and When They Apply

There are two main types of waivers allowed by the U.S. Department of Energy (USDOE):

A. General Applicability Waivers

These waivers apply broadly to Grid Resilience projects. They include:

1. Small Grants – For projects with federal grant awards under \$250,000.
 - None of the current Oregon projects fall below this threshold.
2. De Minimis – Allows up to 5% of total covered project material costs to be noncompliant.
 - Subrecipient must list noncompliant items and show they remain under the cost limit.
3. Minor Components – Applies only to foreign components of domestically-produced iron and steel products. Cost of foreign-sourced components must be less than 5% of material cost of product.
 - Subrecipient must provide a manufacturer's certificate showing foreign components are less than 5% of that product's material cost.

B. Project Specific Waivers

These apply to individual projects when one of these conditions is met:

1. Public Interest – BABA compliance would create outcomes not in the public interest.
2. Nonavailability – Needed materials are not produced in the U.S. in sufficient quantity or quality.
3. Unreasonable Cost – Using compliant materials would increase the overall project cost by more than 25%.

Important Notes

- Waivers require a formal request to USDOE; none are automatic.
- USDOE may request additional documentation before approval.
- General Applicability Waivers expire **July 23, 2028**, unless extended.

3. Waiver Submission Procedure

If a project needs a waiver, ODOE and the subrecipient work together to develop the draft waiver request. Once finalized, ODOE submits the waiver form to USDOE.

4. Manufacturer Certifications and Recordkeeping

A. Certificates

- Subrecipients must provide manufacturer certificates showing BABA compliance for materials when submitting invoices.
- ODOE supplies a certificate template.

B. Materials Covered

- All materials permanently installed during the project, even if they are part of the cost match.

C. Recordkeeping

- ODOE stores all certificates in a shared BABA Manufacturer Certificates folder.

5. Ongoing Monitoring and Site Visits

ODOE will also assess BABA compliance during project site visits, including a dedicated compliance discussion. Evaluations focus on whether the subrecipient has a clear process to ensure materials purchased are BABA compliant.

ODOE may inspect site materials, take photos, and ask clarifying questions to verify compliance.



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