



FEMA Policy: Buy America Preference in FEMA Financial Assistance Programs for Infrastructure

FEMA Policy #207-22-0001

BACKGROUND

Section 70914 of the Build America, Buy America Act (BABAA), [Pub. L. No. 117-58, §§ 70901-52](#), requires all federal agencies, including FEMA, to ensure that no federal financial assistance for “infrastructure” projects is provided “unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

On April 18, 2022, the Office of Management and Budget (OMB) issued [OMB Memorandum M-22-11](#), *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure* (OMB Memo M-22-11). In response, FEMA issued [FEMA Interim Policy #207-22-0001](#), *Buy America Preference in FEMA Financial Assistance Programs for Infrastructure*.

On Oct. 23, 2023, OMB updated Title 2 of the Code of Federal Regulations (2 CFR) to add a [new part 184 and revise 2 CFR § 200.322](#). This new part 184 includes:

1. Definitions for key terms, including iron or steel products, manufactured products, construction materials, and materials identified in section 70917(c) of BABAA;
2. Guidance for determining the cost of components of manufactured products; and
3. Guidance on proposing and issuing Buy America waivers.

The revised provision in 2 CFR § 200.322 specifies that federal agencies providing federal financial assistance for infrastructure projects must implement the BABAA requirements set forth in 2 CFR part 184.¹

On Oct. 25, 2023, OMB released [OMB Memorandum M-24-02](#), *Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure* (OMB Memo M-24-02) to provide implementation guidance for federal agencies. Accordingly, [subject FEMA program awards](#) issued from Jan. 2, 2023, through Oct. 24, 2023, will continue to follow the guidance outlined in OMB Memo M-22-11. [Subject FEMA program awards](#) issued *on or after* Oct. 25, 2023, will follow the guidance outlined in OMB Memo M-24-02.

¹ 88 FR 57750 (Aug. 23, 2023).



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The new part 184 and the revisions at 2 CFR § 200.322 are effective for infrastructure projects under [subject FEMA program awards](#) issued *on or after* Oct. 25, 2023. However, if significant design or planning changes are made to the infrastructure project, FEMA may apply this part to the additional federal award. Infrastructure projects obligated under a FEMA award after one year from the effective date of this part are subject to this part, regardless of whether this part applied to previous awards for the project.

This policy supersedes FEMA Interim Policy #207-22-0001, issued Nov. 16, 2022.

PURPOSE

The purpose of this policy is to provide guidance on FEMA’s implementation of the BABAA requirements and outline FEMA’s process for waiving domestic preferences, when necessary. These domestic preference requirements apply to new infrastructure awards under FEMA financial assistance programs for infrastructure made on or after Jan. 2, 2023, as well as new funding FEMA obligates to existing awards or through renewal awards where the new funding is obligated on or after Jan. 2, 2023.²

PRINCIPLES

- A. Ensure that FEMA financial assistance programs subject to BABAA are identified and adhere to new domestic preference requirements.
- B. Provide clarity on how BABAA requirements apply to FEMA financial assistance programs.
- C. Reduce complexity by issuing a single policy on BABAA requirements for all FEMA financial assistance programs.
- D. Implement transparent processes and criteria for BABAA waiver requests.

REQUIREMENTS

APPLICABILITY

A. DOMESTIC PREFERENCE

Outcome: Applicable FEMA recipients and subrecipients comply with domestic preference requirements.

New awards under [FEMA financial assistance programs subject to the BABAA requirements](#) made on or after Jan. 2, 2023, as well as new funding FEMA obligates to existing awards or

² FEMA determined that it was in the public interest to issue a [general applicability waiver of the BABAA requirements](#) to allow for an adjustment period in order for FEMA, its recipients, subrecipients, industry partners, and other stakeholders to develop and transition to the new compliance and certification process for iron, steel, manufactured products, and construction materials. This waiver was effective for six (6) months from Jul. 1, 2022, through Jan. 1, 2023. Due to this waiver period, the BABAA requirements are effective for subject FEMA awards, as well as funds obligated to existing awards, issued on or after Jan. 2, 2023.



through renewal awards on or after Jan. 2, 2023, must comply with the following domestic preference requirements³:

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.⁴
2. All [manufactured products](#) purchased with FEMA financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States must be greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
 - a. In determining whether the cost of components for manufactured products is greater than 55% of the total cost of all components, use the following instructions:
 - i. 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
 - ii. For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.⁵
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.⁶

B. FEMA FINANCIAL ASSISTANCE PROGRAMS

1. FEMA has determined that the financial assistance programs attached as “[Appendix A](#)” are subject to domestic preference requirements under BABAA.
2. FEMA has determined that the financial assistance programs attached as “[Appendix B](#)” are not subject to domestic preference requirements under BABAA.

³ BABAA §§ 70914(a), 70912(2); OMB Memo M-24-02.

⁴ 2 CFR § 184.3

⁵ 2 CFR § 184.5.

⁶ 2 CFR § 184.6.



C. INFRASTRUCTURE PROJECTS

Outcome: Applicable infrastructure projects are subject to domestic preference requirements.

1. Domestic preferences under BABAA only apply 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 domestic 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 or permanently affixed to the structure.⁷
 - a. FEMA determined that BABAA would not apply to "removable" objects that are not an integral part of the structure or permanently affixed to the infrastructure project. Therefore, objects such as security cameras and fire/smoke/carbon monoxide detectors are not subject to the domestic preference requirements. Moreover, BABAA does not apply to building appliances (e.g., microwaves, refrigerators, dishwashers, etc.), and generators that are used at/or within the finished infrastructure project but are not an integral part of or permanently affixed to the structure.
2. Categorization of articles, materials, and supplies. An article, material, or supply should only be classified into one of the following categories:
 - Iron or steel products;
 - Manufactured products;
 - Construction materials; or,
 - Section 70917(c) materials.
 - a. 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 C.2. above. The classification of an article, material, or supply as falling into one of the categories listed in paragraph 1(a) 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.
 - b. 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.⁸
3. Infrastructure, for the purposes of BABAA, includes, at a minimum, in the United States, the structures, facilities, and equipment for roads, highways and bridges; public transportation; dams, ports, harbors and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband

⁷ OMB Memo M-24-02.

⁸ 2 CFR § 184.4(e) – (f).



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infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.⁹

4. A domestic preference applies to an entire infrastructure project funded by both federal and non-federal funds under one or more awards.
5. If FEMA has determined that no funds from a particular award will be used for infrastructure, a domestic preference does not apply to that award. A domestic preference does not apply to non-infrastructure components or spending under an infrastructure project award.
6. Examples of FEMA projects where the domestic preference does not apply include:
 - a. Technical assistance, management costs, and debris removal projects.
 - b. Projects consisting solely of the purchase, construction, or improvement of a private home (e.g., single and multi-family residential structures) for personal use (not serving a public function). The domestic preference requirements would also not apply to nonresidential structures¹⁰ that are privately owned and do not serve a public function.¹¹
 - c. [Hazard Mitigation Assistance Program](#) projects and activities including design and planning (although domestic preferences must be considered during planning to ensure compliance for construction projects e.g., design-build contracts), project scoping/advance assistance, partnerships, hazard mitigation planning and planning-related activities, codes and standards, and acquisition and demolition projects where there are no articles, materials and supplies that are consumed in, incorporated into, or affixed to an infrastructure project.
 - d. The Buy America preference does not apply to rolling commodities such as firetrucks and ambulances. While these rolling commodities may use infrastructure as defined by BABAA, such as roads, highways, bridges, and public transportation, they are not permanently affixed to a structure. For FEMA financial assistance programs subject to BABAA, such as the [Assistance to Firefighters](#) and [Urban Search and Rescue](#) grant programs, the use of grant funds to procure rolling commodities to include maritime vessels and boats are not considered infrastructure projects.

⁹ BABAA § 70912(5); 2 CFR § 184.4(c); OMB Memo M-24-02.

¹⁰ [Non-residential structures](#) include but are not limited to small business concerns, places of worship, schools, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, mercantile structures, agricultural and industrial structures, warehouses, hotels, and motels with normal room rentals for less than 6 months' duration, and nursing homes.

¹¹ 2 CFR § 184.4(d). In determining if a particular construction project meets the definition of infrastructure, FEMA will consider whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation.



COMPLIANCE

A. NOFO LANGUAGE, CONTRACT PROVISIONS, AND SELF-CERTIFICATIONS

Outcome: Applicable FEMA recipients and subrecipients (and their contractors and subcontractors) are aware of, understand, and certify compliance with the requirements of BABAA.

1. All Notices of Funding Opportunity (NOFOs) for FEMA financial assistance programs subject to BABAA will contain language explaining the BABAA requirements. NOFOs are then incorporated as terms and conditions of the award. Recipients and subrecipients must refer to the relevant NOFO as well as specific terms and conditions in the award for BABAA requirements. Where FEMA has previously published the NOFO without information about BABAA applicability, FEMA will add similar language directly to the applicable award when obligating the funding.
2. All FEMA awards, whether the program is subject to BABAA or not, will also include the [DHS Standard Terms and Conditions](#), which include BABAA language as well. If recipients or subrecipients are unsure whether BABAA applies to their funding, they should reach out to their FEMA grant program point of contact or fema-grants-buyamerica@fema.dhs.gov.
3. All recipient and subrecipient contracts under FEMA financial assistance awards for infrastructure issued on or after Jan. 2, 2023, as well as funds obligated to existing awards issued on or after Jan. 2, 2023, must include:
 - a. A contract provision explaining the BABAA requirements; and,
 - b. A self-certification where contractors can certify compliance with domestic preference requirements outlined in the BABAA Requirements section of this policy.¹²
 - i. For the required contract provision and self-certification, recipients and subrecipients may draft their own provision and self-certification that meet the BABAA requirements to include in contracts and subcontracts. Alternatively, they may include language attached as [Appendix D](#), “BABAA Contract Provision and Self-Certification,” in their contracts and subcontracts. Recipients and subrecipients should also consult their own contracting officials or legal counsel when incorporating any contract provision or self-certification.

WAIVERS

A. WAIVER AUTHORITY

Outcome: Applicable FEMA recipients and subrecipients may request a waiver of the application of a domestic preference in certain limited circumstances.

¹² 2 CFR § 184.4(b).



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1. FEMA may waive the application of a domestic preference under a financial assistance program in any case in which the FEMA Assistant Administrator for the Grant Programs Directorate or designee finds that:
 - a. Application of the BABAA requirements would be inconsistent with the public interest (a “public interest waiver”);
 - b. 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 “nonavailability waiver”); or
 - c. 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% (an “unreasonable cost waiver”).¹³

B. WAIVER CRITERIA

FEMA may reject or grant waivers in whole or in part, and, to the greatest extent practicable, waivers will be issued at the project level and be product specific. When necessary, FEMA may issue a waiver that has applicability beyond a single project. However, FEMA will issue, construe, and apply waivers to ensure the maximum utilization of goods, products, and materials produced in the United States, consistent with applicable law. FEMA will, at a minimum, consider the following principles before issuing a waiver of any type:

1. Time-limited

In certain limited circumstances, FEMA may determine that a waiver should be constrained principally by a length of time, rather than by the specific projects to which it applies. For example, waivers of this type may be appropriate when an item that is “nonavailable” is widely used in projects funded by a particular program’s awards. Moreover, given market fluctuations, waivers of this type may be appropriate when purchasing a subject domestic item will increase the cost of the overall project by more than 25%. When issuing such a waiver, FEMA should identify a short, definite time frame (e.g., no more than one to two years) designed to ensure that, as domestic supply becomes available, domestic producers will have prompt access to the market created by the program.

2. Targeted

Waivers that are not limited to particular projects should apply only to:

- a. Item(s), product(s), or material(s); or
- b. Category(ies) of item(s), product(s), or material(s).

3. Conditional

¹³ BABAA § 70914(b); 2 CFR § 184.7(a); OMB Memo M-24-02.



FEMA will issue waivers with specific conditions that support BABAA policies.¹⁴

C. WAIVER TYPE

Outcome: Recipients and subrecipients understand the types of allowable waivers of the domestic preference.

Waivers of the domestic preference will be categorized as one of the following waiver types:

1. Public Interest Waivers

- a. A waiver in the public interest may be appropriate where FEMA determines that other important policy goals cannot be achieved consistent with the Buy America requirements established by BABAA, and the proposed waiver would not meet the requirements for a nonavailability or unreasonable cost waiver. Public interest waivers may have a variety of bases and should be project specific whenever possible. All proposed waivers citing the public interest as the statutory basis must include a detailed written statement, which addresses all appropriate factors, such as potential obligations under international agreements and justifying why granting the requested waiver is in the public interest. To the extent permitted by law, FEMA shall assess whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel¹⁵, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products.¹⁶

2. Nonavailability Waivers

- a. Before granting a nonavailability waiver, FEMA will consider whether the recipient has performed thorough market research, which may be accomplished with FEMA assistance, and adequately considered, where appropriate, qualifying alternate items, products, or materials. Waivers should describe the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.¹⁷

3. Unreasonable Costs

- a. An unreasonable cost waiver is available if 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%. Before granting an unreasonable cost waiver,

¹⁴ OMB Memo M-24-02.

¹⁵ Note: Dumping (also known as selling at less than normal value), is a form of unfair or predatory (anti-competitive) pricing. This definition is not official but may be referenced.

¹⁶ Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America's Workers*, 86 Fed. Reg. 7475 (Jan. 25, 2021) (§ 5 *Accounting for Sources of Cost Advantage*); OMB Memo M-24-02.

¹⁷ OMB Memo M-24-02.



to the extent permitted by law, FEMA will ensure the recipient has provided adequate documentation that no domestic alternatives are available within this cost parameter. For requests citing unreasonable cost as the statutory basis of the waiver, the waiver justification must include, as applicable, a comparison of the cost of the domestic product to the cost of the foreign product and a comparison of the overall cost of the project with domestic products to the overall cost of the project with foreign-origin products, pursuant to the requirements of BABAA. Publicly available cost comparison data may be provided in lieu of proprietary pricing information.¹⁸

4. General Applicability Waivers

- a. The term “general applicability waiver” refers to a waiver that applies generally across multiple awards. A general applicability waiver can be “product-specific” (e.g., applies only to a product or category of products) or “non-product specific” (e.g., applies to all “manufactured products”). General applicability waivers will be issued only when necessary to advance FEMA’s missions and goals, consistent with BABAA and this guidance.¹⁹
- b. Examples of FEMA-approved general applicability waivers include, but are not limited to:
 - i. [Small Projects](#): Waives the need for small projects to comply with the Buy America preference for otherwise covered infrastructure project purchases. This waiver applies to projects under FEMA federal financial assistance awards where the total project costs do not exceed the federal simplified acquisition threshold (currently set at \$250,000).²⁰

A FEMA federal financial assistance award may be comprised of multiple projects with varying levels of cost. The waiver would be applicable for any project to which FEMA awards a financial award or subaward that is less than the federal simplified acquisition threshold. If FEMA provides a financial assistance award, or subaward, composed of several projects, each project is eligible under the Small Projects general applicability waiver if these projects are sufficiently distinct from one another and if the total amount for each project is below the federal simplified acquisition threshold.

Award recipients and subrecipients do not need to apply for this waiver, however they should prepare documentation showing that the total project costs are less than the federal simplified acquisition threshold, and that each project applying separately for the waiver is distinct from other projects. This documentation should be maintained in project records and provided upon request.

¹⁸ OMB Memo M-24-02.

¹⁹ 2 CFR § 184.7(e); M-24-02.

²⁰ OMB Memo M-24-02.



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If a project utilizing the Small Projects Waiver encounters changes to the project that increase the total project cost over the waiver threshold, FEMA will consider the funds over the waiver threshold as subject to the BABAA requirements.

- ii. [De Minimis](#): Waives the need to comply with the Buy America domestic content procurement preference (“Buy America preference”) for otherwise covered infrastructure project purchases, totaling up to 5% of the total material costs subject to BABAA, up to a maximum of \$1 million.²¹

While every effort should be made to ensure all products permanently incorporated into a project are BABAA-compliant, there may be some products that are unable to be obtained as BABAA-compliant or origins are unknown. The de minimis waiver allows for inclusion of products with unknown or foreign origin for up to 5% of total materials costs subject to BABAA, not to exceed \$1 million. Once a recipient’s total purchases of materials otherwise covered by the Buy America preference reach 5% of applicable project costs, or the de minimis threshold of \$1 million, whichever is lower, all other applicable project purchases must comply with the Buy America preference.

FEMA encourages project award recipients and subrecipients that utilize this waiver to track the cost of products claimed under the de minimis waiver, as well as total applicable project cost.

- iii. [Minor Components](#): Reduces the administrative burden to iron and steel manufacturers who have reported significant compliance challenges for products that contain miscellaneous iron and steel minor components whose origin cannot be reliably tracked or determined but are otherwise domestically produced.²²

This waiver permits manufacturers to produce BABAA-compliant iron and steel products that contain minor iron or steel components of foreign or unknown origin. These iron or steel products can contain non-domestically produced miscellaneous iron and steel minor components comprising no more than 5% of the total material cost of an otherwise domestically produced iron and steel product. This waiver does not exempt the whole iron and steel product from the Buy America preference requirement, and the primary iron and steel components of the product must be produced domestically.

Manufacturers are encouraged to provide award recipients with product-specific certifications verifying BABAA compliance, and award recipients should store and maintain these certifications in their project files. The manufacturer should indicate in the certification letter if the manufacturer is utilizing the Minor Components Waiver for the specified product.

²¹ OMB Memo M-24-02.

²² OMB Memo M-24-02.



- iv. Other Considerations: A waiver may be in the public interest in one circumstance, but not in another, and considerations will depend upon the nature and amount of resources available to the recipient, the value of the items, goods, or materials in question, the potential domestic job impacts, and other policy considerations, including sustainability, equity, accessibility, performance standards, and the domestic content (if any) of and conditions under which the non-qualifying good was produced.²³

D. WAIVER PROCESS

Outcome: Requests for a waiver of a domestic preference by FEMA recipients and subrecipients are submitted and considered using a transparent process.

FEMA estimates that the timeline for most waiver requests will be 60 calendar days from date of submission until final waiver determination is made. See “FEMA BABAA Waiver Process Workflow” attached as [Appendix E](#).

All general applicability waivers shall be reviewed within no less than 5 years of issue date.²⁴ For renewals of general applicability waivers, FEMA estimates the timeline to be 75 calendar days from date of submission until final waiver determination is made due to the requirement for a longer public comment period.

The steps below outline how FEMA accepts, reviews, and processes requests for the waiver of the domestic preference requirements. FEMA may request additional information or decline requests, with cause, during any of the steps outlined below.

1. Recipient submits written waiver request to FEMA
 - a. Recipient must submit a written waiver request to FEMA. All waiver requests must include a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States and a certification that there was a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers. To the greatest extent practicable, each recipient waiver request submitted should include elements listed in, “Suggested Elements of Waiver Requests,” attached as [Appendix C](#).
 - b. Recipient must submit waiver requests to a FEMA grant representative. Subrecipients must coordinate with their pass-through agency, so they can formally submit the request or endorse the submittal.

²³ OMB Memo M-24-02.

²⁴ BABAA § 70914(d)



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- c. FEMA does not accept waiver requests or product research requests directly from manufacturers, suppliers, or distributors.
2. FEMA performs technical review of waiver request
 - a. FEMA reviews the recipient's waiver request to make sure it is complete and includes all necessary elements. FEMA also reviews the recipient waiver against market and industry research to substantiate the need for a waiver. If information is missing, the recipient must provide it (e.g., specifications or product quantity) to FEMA within 15 calendar days of request from FEMA.
 - b. If the findings do not substantiate a need for a waiver of BABAA requirements, FEMA may ask the recipient for additional information or decline the request.
 3. FEMA submits proposed waiver to OMB MIAO
 - a. If the findings from the FEMA technical review support the need for a waiver, FEMA forwards the proposed recipient waiver request to the Office of Management and Budget's (OMB) Made in America Office (MIAO) for preliminary review.
 4. OMB MIAO conducts preliminary review and returns to FEMA
 - a. OMB MIAO conducts a preliminary review and provides approval or comments. FEMA reviews and adjudicates MIAO comments prior to posting proposed waivers for public comment.²⁵
 5. FEMA posts proposed waiver for public comment period (15 or 30 calendar days)
 - a. When the OMB MIAO provides preliminary approval of the waiver, FEMA posts the waiver (including all initial waiver requests) for a 15 calendar day public comment period on the [FEMA Build America, Buy America website](#) and the [Made in America Office website](#). FEMA posts renewals of general applicability waivers for a 30-calendar day public comment period, as well as publishes them in the Federal Register.
 6. FEMA submits the waiver package to OMB MIAO for final determination
 - a. Once the public comment period has expired, FEMA reviews and adjudicates public comments received, as appropriate. If domestic alternatives are identified, FEMA coordinates with the recipient to ensure domestic products meet the requirements. If all public comments are adjudicated and no domestic alternatives meet project specifications and schedule, FEMA drafts a waiver decision memo.
 - b. FEMA resubmits the recipient waiver request, public comments, and decision memo to OMB MIAO for consideration.

²⁵ If OMB MIAO determines that the proposed waiver is inconsistent with applicable law or policy, [Executive Order 14005](#), Section 4(c) outlines the process for resolving disagreements between OMB MIAO and FEMA.



- 7. OMB MIAO conducts final determination review and returns to FEMA
 - a. OMB MIAO reviews the proposed waiver, public comments, and FEMA decision memo to determine compliance with applicable law and policy. If OMB MIAO has comments, FEMA reviews and adjudicates them.
- 8. FEMA notifies recipient
 - a. When OMB MIAO provides final approval, FEMA notifies the recipient and updates the FEMA Build America, Buy America website with the waiver determination status.

E. FEMA WAIVERS

Outcome: Waivers are publicly accessible.

FEMA approved waivers, as well as proposed waivers available for public comment, can be accessed at ["Buy America" Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov](#).

Robert A. Farmer
Deputy Assistant Administrator, Office of Enterprise
Grant Services, Grant Programs Directorate

April 25th, 2024

Date



ADDITIONAL INFORMATION

REVIEW CYCLE

FEMA Policy #207-22-0001, Buy America Preference in FEMA Financial Assistance Programs for Infrastructure, will be reviewed, reissued, revised, and/or rescinded within four years of the issue date.

AUTHORITIES and REFERENCES

Authorities

- A. [Infrastructure Investment and Jobs Act \(IIJA\), which includes Build America, Buy America Act \(BABAA\), Pub. L. No. 117-58, §§ 70901-52.](#)
- B. [2 CFR Part 184.](#)
- C. [2 CFR § 200.1.](#)
- D. [2 CFR § 200.322.](#)

Note: Policies do not have the force and effect of law, except as authorized by law or as incorporated into a contract.

References

- A. [Office of Management and Budget \(OMB\) Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022.](#)
- B. [Office of Management and Budget \(OMB\) Memorandum M-24-02, Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, Oct. 25, 2023.](#)
- C. [Department of Homeland Security Standard Terms and Conditions.](#)

MONITORING AND EVALUATION

FEMA monitors the implementation and compliance of this policy through regular desk, virtual, and/or on-site reviews of financial assistance programmatic and financial requirements. FEMA coordinates with program offices, regional offices, interagency partners, and non-Federal stakeholders, as appropriate. FEMA provides technical assistance and recipient outreach, as necessary.

Noncompliance with BABAA requirements results in potential issuance of corrective actions for any findings upon FEMA review, additional oversight, and specific terms and conditions imposed upon future awards, as appropriate. FEMA will consider feedback from stakeholders when issuing a final policy on implementation and enforcement.



DEFINITIONS

Buy America Preference: The “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each federal agency to ensure that none of the funds made available for a federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.²⁶

Component: Means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into a manufactured product; or, where applicable, an iron or steel product.²⁷

Construction Materials: Means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

1. The listed items are:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Fiber optic cable (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; and
- Drywall.

2. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.²⁸

Domestic Content Procurement Preference: All iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.²⁹

Federal Financial Assistance: Assistance that non-federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans, loan guarantees, and other types of financial assistance. It does not include

²⁶ 2 CFR § 184.3 “Buy America Preference”.

²⁷ 2 CFR § 184.3 “Component”.

²⁸ BABAA § 70917(c)(1).

²⁹ BABAA § 70912(2).



expenditures for assistance authorities relating to major disasters or emergencies under sections 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act relating to a major disaster or emergency declared under section 401 or 501, respectively, or pre and post disaster or emergency response expenditures.³⁰

Infrastructure: Public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.³¹

Infrastructure Project: Any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR § 184.4.³²

Iron or Steel Products: Articles, materials or supplies that consist wholly or predominantly of iron or steel or a combination of both.³³

Manufacturer: Means the entity that performs the final manufacturing process that produces a manufactured product.³⁴

Manufactured Products means:

1. Articles, materials, or supplies that have been
 - a. Processed into a specific form and shape; or
 - b. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
2. If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR § 184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR § 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.³⁵

³⁰ BABAA § 70912(4); 2 CFR § 200.1 Federal financial assistance.

³¹ BABAA § 70912(5).

³² 2 CFR § 184.3 “Infrastructure project”.

³³ 2 CFR § 184.3 “Iron or steel products”.

³⁴ 2 CFR § 184.3 “Manufacturer”.

³⁵ 2 CFR § 184.3 “Manufactured products”.



Predominantly of Iron or Steel or a combination of both: The cost of the iron and steel content exceeds 50% of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings or forgings used in the manufacture of the product and a good faith estimate of the cost of iron or steel components.³⁶

Produced in the United States means:

1. In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. In the case of manufactured products:
 - i. The product was manufactured in the United States; and
 - ii. The cost of components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% 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. See § 184.2(a). The costs of components of a manufactured product are determined according to § 184.5.
 - iii. In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. See § 184.6 for more information on the meaning of “all manufacturing processes” for specific construction materials.³⁷

Project: The construction, alteration, maintenance, or repair of infrastructure in the United States.³⁸

Section 70917(c) materials: Means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See section 70917(c) of BABAA.³⁹

QUESTIONS

FEMA award recipients and subrecipients should direct their questions to fema-grants-buyamerica@fema.dhs.gov.

³⁶ 2 CFR § 184.3 “Predominantly of iron or steel or a combination of both”.

³⁷ 2 CFR § 184.3 “Produced in the United States”.

³⁸ BABAA § 70912(7).

³⁹ 2 CFR § 184.3 “Section 70917(c) materials”.



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APPENDIX A

FEMA Financial Assistance Programs Subject to Domestic Preference

FEMA Grant Program	Assistance Listing Number
Assistance to Firefighters Grant Program (AFG)	97.044
Building Resilient Infrastructure and Communities (BRIC)	97.047
Chemical Stockpile Emergency Preparedness Program (CSEPP)	97.040
Emergency Food and Shelter Program (EFSP)	97.024
Emergency Management Performance Grant Program (EMPG)	97.042
Emergency Operations Center Grant Program (EOCGP)	97.052
Fire Prevention & Safety Grant Program (FP&S)	97.044
Flood Mitigation Assistance (FMA) (including Swift Current)	97.029
Homeland Security Grant Program (HSGP)	97.067
Intercity Bus Security Grant Program (IBSGP)	97.057
Intercity Passenger Rail (IPR)	97.075
Next Generation Warning System (NGWS)	97.138
Nonprofit Security Grant Program (NSGP)	97.008
Port Security Grant Program (PSGP)	97.056
Pre-Disaster Mitigation (PDM)	97.047
Rehabilitation of High Hazard Potential Dams (HHPD)	97.041
Shelter and Services Program (SSP)	97.141
Staffing for Adequate Fire and Emergency Response (SAFER)	97.083
State and Local Cybersecurity Grant Program (SLCGP)	97.137



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Transit Security Grant Program (TSGP)	97.075
Tribal Cybersecurity Grant Program (TCGP)	97.137
Tribal Homeland Security Grant Program (THSGP)	97.067
National Urban Search & Rescue Response System (US&R)	97.025



APPENDIX B
FEMA Financial Assistance Programs Not Subject to Domestic Preference

FEMA Grant Program	Assistance Listing Number
Alternatives to Detention (ATD) Case Management Pilot Program (CMPP)	97.102
Community Assistance Program – State Support Services Element (CAP-SSSE)	97.023
Community Disaster Loans (CDL)	97.030
Continuing Training Grant (CTG)	97.005
Continuing Training Grant – Mississippi Grant University (CTG-MSU)	97.005
Continuing Training Grant – National Cybersecurity Preparedness Consortium (CTG-NCPC)	97.005
Cooperating Technical Partners Grant Program (CTP)	97.045
Crisis Counseling Program (CCP)	97.032
Disaster Case Management (DCM)	97.088
Disaster Legal Services	97.033
Disaster Unemployment Assistance (DUA)	97.034
Emergency Management Baseline Assessment Grant (EMBAG)	97.131
Fire Management Assistance Grant Program (FMAG)	97.046
Hazard Mitigation Grant Program (HMGP) and HMGP Post Fire Assistance	97.039
Homeland Security Preparedness Technical Assistance Program (HSPTAP)	97.007
Individuals and Households Program – Housing (IHP – HA)	97.048



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Individuals and Households Program – Other Needs Assistance (INP – ONA)	97.050
Interoperable Communications Equipment	97.055
National Dam Safety Program (NDSP)	97.041
National Domestic Preparedness Consortium (NDPC)	97.005
National Earthquake Hazards Reduction Program – Individual State Earthquake Assistance (NEHRP-ISEA)	97.082
National Earthquake Hazards Reduction Program – Multi-State and National Earthquake Assistance (NEHRP-MSNEA)	97.082
National Incident Management System (NIMS)	97.107
Presidential Residence Protection Assistance Program (PRPA)	97.134
Public Assistance Grant Program (PA)	97.036
Regional Catastrophic Preparedness Grant Program (RCPGP)	97.111
Safeguarding Tomorrow Through Ongoing Risk Mitigation (STORM) Act Revolving Loan Fund	97.139
State Fire Training Systems Grant Program (SFTS)	97.043
Targeted Violence and Terrorism Prevention (TVTP)	97.132



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APPENDIX C

Elements for Waiver Request

To the greatest extent practicable, each proposed waiver submitted to FEMA should include the following information, as applicable:

- Waiver type (nonavailability, unreasonable cost, or public interest);
- Recipient name and Unique Entity Identifier (UEI);
- Federal awarding agency organizational information (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code);
- Financial assistance listing name and number;
- Federal financial assistance program name;
- Federal Award Identification Number (FAIN) (if available);
- Federal financial assistance funding amount (total federal award amount);
- Total cost of infrastructure expenditures, including all federal and non-federal funds (to the extent known);
- Infrastructure project description and location (to the extent known);
- List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country(ies) of origin (if known), and relevant PSC and NAICS code for each. If known, include product specifications.
- A certification that the federal official or assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
- A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach), in the case of a project or award specific waiver, by the recipient, to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation; and
- Anticipated impact if no waiver is issued.



APPENDIX D

Sample Language for Required Contract Provision and Self-Certification

Applicability

The BABAA contract provision and self-certification are required for contracts and subcontracts for infrastructure projects that are subject to the BABAA requirements unless the requirement is waived. For additional information on types of BABAA waivers, please refer to FEMA’s website at ["Buy America" Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov](https://www.fema.gov/buy-america-preference).

Suggested Language

The following provides a sample contract provision:

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the Build America, Buy America Act (BABAA) shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA. Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the recipient who, in turn, will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will, in turn, forward the disclosures to FEMA.

Required Self-Certification

For FEMA financial assistance programs subject to BABAA, contractors and subcontractors must sign and submit the following certification to the next tier (e.g., subcontractors submit to the contractor; contractors submit to the non-federal entity) each bid or offer for an infrastructure project that has not been waived by a BABAA waiver:

The undersigned certifies, to the best of their knowledge and belief, that:

The Build America, Buy America Act (BABAA) requires that no federal financial assistance for “infrastructure” projects is provided “unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” Section 70914 of Public Law No. 117-58, §§ 70901-52.

The undersigned certifies that for the _____ (**Project Name and Location**) _____ that the iron, steel, manufactured products, and construction materials used in this contract are in full compliance with the BABAA requirements including:



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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 purchased with FEMA financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
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 [Contractor or Subcontractor], _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the [Contractor or Subcontractor] understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.”

Signature of [Contractor’s or Subcontractor’s] Authorized Official

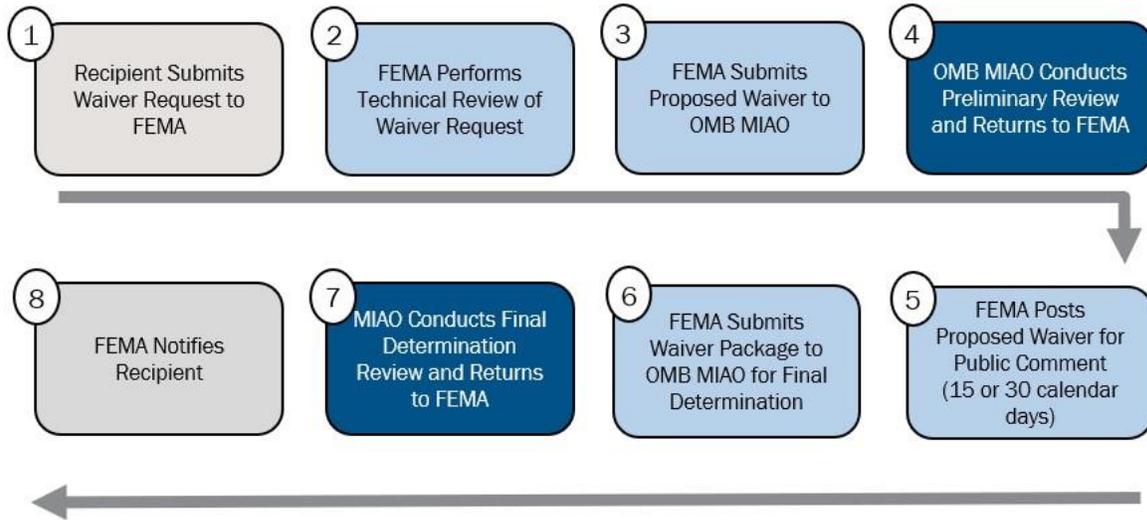
Name and Title of [Contractor’s or Subcontractor’s] Authorized Official

Date



APPENDIX E Waiver Process Workflow

FEMA BABAA Waiver Process Workflow



Recipient

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MIAO