



December 23, 2024

Proposed One-Year General Applicability Waiver of the Build America, Buy America Act Provisions for FEMA’s Safeguarding Tomorrow Revolving Loan Fund Program

AGENCY: Grant Programs Directorate, Federal Emergency Management Agency (FEMA)

ACTION: Notice

SUMMARY: The Safeguarding Tomorrow Revolving Loan Fund Program (Safeguarding Tomorrow RLF) is a recently established federal financial assistance program that provides capitalization grants to eligible states, federally recognized tribes, territories, and the District of Columbia to establish and capitalize revolving loan funds that provide hazard mitigation assistance for local governments to reduce risks from natural hazards and disasters. The program became subject to the Build America, Buy America Act requirements on Oct. 1, 2024, when 2 CFR Part 200 was updated to clarify that “loans” a type of federal financial assistance subject to BABAA.

In accordance with the Build America, Buy America Act (BABAA), FEMA proposes a general applicability waiver for one year of the Buy America Domestic Content Procurement Preference (referred to as the “Buy America preference”) as it applies to awards under the Safeguarding Tomorrow RLF. FEMA proposes that a time-limited period waiver is in the public interest because, at present, FEMA does not have established policies, processes, or compliance mechanisms in place to ensure adherence to its BABAA requirements by loan recipients under the Safeguarding Tomorrow RLF, and that the Buy America preference has

not been effectively communicated to loan recipients to facilitate compliance. The one-year adjustment period will give FEMA, states, tribes, territories, the District of Columbia, and loan recipients time to develop the necessary policies and procedures, including providing sufficient time to:

- Establish and implement policies and procedures to ensure compliance with BABAA; and
- Develop communication and training materials for awardees and loan recipients to inform them of the new compliance obligations.

This approach aligns with FEMA's commitment to effective implementation of BABAA while balancing the need for practical, stakeholder-informed processes. FEMA will solicit comments from stakeholders, including state and local governments, industry partners, and other interested parties, during a 15-day public comment period.

DATES: If approved, this waiver will be effective for one (1) year from the date the final waiver is issued. The waiver would be applicable during its one-year effective period to capitalization grant awards made by FEMA under the Safeguarding Tomorrow RLF program and would apply to all loans sourced directly from those grant awards.

OTHER: The waiver would not apply to capitalization grant awards made by FEMA under the Safeguarding Tomorrow RLF program under the FY23 and FY24 Notices of Funding Opportunity, or any loans sourced directly from those grant awards, because BABAA does not apply to Safeguarding Tomorrow RLF program grant awards that were issued before Oct 1, 2024.

ADDRESSES: Interested parties are invited to submit comments on this proposed general applicability waiver. To ensure consideration, comments must be submitted via email to

FEMA-Grants-BuyAmerica@fema.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Build America, Buy America

The Build America, Buy America Act (BABAA) was enacted as part of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, on November 15, 2021. BABAA establishes a domestic content procurement preference known as the Buy America preference, which requires that no federal funds may be obligated for infrastructure projects unless the iron, steel, manufactured products, and construction materials used in those projects are produced in the United States.

The term “infrastructure” is broadly defined under Section 70912 of BABAA to include construction, alteration, maintenance, and repair of buildings, real property, and other traditionally included public works.

II. FEMA’s Implementation of BABAA

Upon enactment of BABAA, FEMA took significant steps to implement the Buy America preference, including:

- Established a FEMA-wide working group to help develop and implement policies and procedures to ensure compliance.
- Conducted internal assessments that identified the FEMA federal financial assistance programs that were subject to BABAA.
- Issued a general applicability waiver that extended implementation of BABAA to Jan. 2, 2023.
- Coordinated with the Department of Homeland Security to add the BABAA requirements to its Notices of Funding Opportunity and grant award terms and conditions.
- Developed policy and guidance resources for stakeholders.

- Established a FEMA website about its implementation of BABAA.
- Issued Grant Alerts via email to notify internal and external stakeholders of the new requirements.
- Delivered trainings to recipients, subrecipients, and other stakeholders regarding compliance with BABAA.

In 2022, as noted above, FEMA conducted an internal assessment to determine which of its federal financial assistance programs were subject to BABAA. FEMA determined that the Safeguarding Tomorrow RLF program was not subject to BABAA because “loans” was not defined in 2 CFR Part 200 as a type of federal financial assistance subject to BABAA. Accordingly, FEMA did not apply the requirements of BABAA to Safeguarding Tomorrow RLF awards issued under its FY23 and FY24 Notices of Funding Opportunity.

On Oct. 1, 2024, the Office of Management and Budget revised 2 CFR Part 200, including the definition of federal financial assistance to clarify how the term “Federal financial assistance” is applied for purposes of BABA under part 184¹ On that date, OMB added a new paragraph within 2 CFR 200.1 to clarify that “loans” are considered a type of federal financial assistance for purposes of BABAA under 2 CFR Part 184. This prompted FEMA to conduct another internal assessment resulting in the determination that the Safeguarding Tomorrow RLF program is subject to BABAA as of that date.²

While FEMA has made strides to implement BABAA compliance for the programs that were initially determined as subject to BABAA, Safeguarding Tomorrow RLF presents a unique challenge because it is FEMA’s only program that provides capitalization grants for

¹ [2 CFR § 200.1, Definitions](#): Federal financial assistance.

² [89 FR 79731](#) Guidance for Federal Financial Assistance; Corrections.

low-interest loans to states, tribes, territories, and the District of Columbia in need of financial assistance. Consequently, the Safeguarding Tomorrow RLF requires the development of distinctly separate operational processes and recipient guidance before compliance with BABAA can be implemented.

During the waiver period, FEMA will:

- Develop compliance guidance: Issue formal guidance, policy updates, and training materials for state and local governments participating in Safeguarding Tomorrow RLF.
- Engage stakeholders: Solicit feedback from stakeholders, including industry partners and local governments, to inform the development of compliance procedures.

III. Waivers

Under Section 70914(b) of BABAA, FEMA has the authority to waive the Buy America preference when:

1. It would be inconsistent with the public interest;
2. Materials or products subject to the preference are not produced in sufficient and reasonably available quantities or of satisfactory quality; or
3. The use of domestically produced materials would increase the cost of the overall project by more than 25%.

FEMA proposes this waiver under the “public interest” waiver provision. Section 70914(c) provides that a waiver under 70914(b) must be published by the agency with a detailed written explanation for the proposed determination and provide a public comment period of not less than 15 days. Information on this waiver may be found on the webpage at this link: <https://www.fema.gov/grants/policy-guidance/buy-america>.

IV. Public Interest in a General Applicability Waiver of Buy America Provisions for Safeguarding Tomorrow RLF

Safeguarding Tomorrow RLF is a recently established program with unique operational complexities. Under the Safeguarding Tomorrow RLF program, FEMA awards capitalization grants to states, which then use their revolving loan fund to issue loans to local governments.

For the Fiscal Year (FY) 2025 and FY 2026, FEMA's Safeguarding Tomorrow RLF program has \$273 million in grant funding remaining to be released. As of its effective date, this waiver would apply to any of this funding used in capitalization grant awards or funding obligated during the waiver period, and all loans sourced directly from those grants.

Unlike traditional grant programs, Safeguarding Tomorrow RLF requires both federal and state level implementation of new policies and compliance measures. FEMA is not directly involved in the loan agreements, and states are responsible for managing their revolving loan fund and executing loan agreements.

As of this notice, FEMA has not finalized policies or guidance to operationalize BABAA compliance for Safeguarding Tomorrow RLF. Without a waiver, Safeguarding Tomorrow RLF grant recipients and loan recipients would face uncertainty and potential delays in infrastructure projects while waiting for guidance. FEMA, together with state, territorial, tribal, and local stakeholders, will work to develop a comprehensive strategy to implement BABAA compliance for infrastructure projects receiving a Safeguarding Tomorrow RLF loan.

Additionally, loan recipients are not yet aware of the BABAA requirements under a Safeguarding Tomorrow RLF loan. Without a waiver, loan recipients may not understand or would not have anticipated the BABAA requirements applicable to the loan, leading to

potential delays or compliance issues. This waiver will provide time for FEMA to disseminate information, issue formal guidance, and develop training resources.

V. Assessment of Cost Advantage of a Foreign-Sourced Product

Under OMB Memorandum M-24-02, agencies are expected to assess “whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products” as appropriate before granting a public interest waiver. FEMA has concluded that this assessment is not applicable to this waiver, as this waiver is not based in the cost of foreign-sourced products. FEMA will perform additional market research during the duration of the waiver and consult with International Trade Administration to better understand the market to limit the use of waivers caused by dumping of foreign-sourced products.

VI. Limited Duration and Scope of Waiver

If approved, this waiver will be effective for one (1) year from the date the final waiver is issued. The waiver would be applicable during its one-year effective period to capitalization grant awards made by FEMA under the Safeguarding Tomorrow RLF program and would apply to all loans sourced directly from those grant awards. The waiver would not apply to capitalization grant awards made by FEMA under the Safeguarding Tomorrow RLF program under the FY23 and FY24 NOFOs, or any loans sourced directly from those grant awards, because BABAA does not apply to those capitalization grants or loans.

VII. Solicitation of Comments on the Waiver

As required under Section 70914(c) of BABAA, FEMA is soliciting public comments on this waiver. FEMA invites comments on the length, purpose, and scope of the waiver to

allow FEMA to make an informed final determination on this waiver. FEMA welcomes input from all stakeholders, including state and local governments, industry partners, and the general public. Comments must be submitted by on or before Jan. 7, 2025. Comments may be submitted via email to FEMA-Grants-BuyAmerica@fema.dhs.gov.