



FEMA

July 1, 2022

Re: General Applicability of Build America, Buy America Act Provisions as Applied to Recipients and Subrecipients of FEMA Federal Financial Assistance Programs for Infrastructure

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

ACTION: Notice

SUMMARY: In accordance with the Build America, Buy America Act (BABAA) this notice advises that FEMA grants a general applicability waiver for six months to the Buy America Domestic Content Procurement Preference (“Buy America preference”) to provide the agency with sufficient time to maximize the use of American made iron, steel, manufactured products, and construction materials in all federally-funded infrastructure projects. FEMA grants this waiver to prepare for compliance with the new Made in America standards for iron, steel, manufactured products, and construction materials. During this time period, FEMA expects its stakeholders (i.e., state, local, tribal, and territorial (SLTT) governments, and other recipients and subrecipients, as well as industry partners and other stakeholders) to begin the compliance process using feedback from this waiver and continued engagement with FEMA through the waiver period, while FEMA works to create robust enforcement and compliance mechanisms. Industry partners and other stakeholders are encouraged to inform FEMA of currently sufficient domestic availability of categories of materials to help FEMA narrow its applicability of BABAA to rapidly encourage domestic sourcing. This will also include soliciting information relating to FEMA’s potential information collection needs and the associated burdens that would be placed on recipients and subrecipients pursuant to the

requirements of the Paperwork Reduction Act (PRA).

DATES: This waiver is effective upon approval, July 1, 2022, and will remain in effect for all FEMA federal financial assistance infrastructure projects for a period of six months from the date of final approval, which is January 1, 2023.

SUPPLEMENTARY INFORMATION:

I. Build America, Buy America

BABAA was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA). Pub. L. 117-58. BABAA establishes a domestic content procurement preference, the Buy America preference, for federal infrastructure programs. Section 70914(a) of BABAA establishes that no later than 180 days after the date of enactment, FEMA must ensure that none of the funds made available for infrastructure projects may be obligated by FEMA unless FEMA has taken steps to ensure that the iron, steel, manufactured products, and construction materials used in a project are produced in the United States. In section 70912, BABAA further defines a project to include “the construction, alteration, maintenance, or repair of infrastructure in the United States” and includes within the definition of infrastructure those items traditionally included along with buildings and real property. This waiver will allow FEMA time to identify the items that are relevant to the programs covered under this waiver and assess whether any items will be used in the infrastructure industrial strategy or six critical supply chains: the defense industrial base; the public health and biological preparedness industrial base; the information and communications technology (ICT) industrial base; the energy sector industrial base; the transportation industrial base; and supply chains for agricultural commodities and food production.

II. FEMA's Progress in Implementation of BABAA

Since the enactment of BABAA, FEMA has worked diligently to implement the Buy America preference. Consistent with the requirements of section 70913 of BABAA, FEMA has been working with the Department of Homeland Security to produce a report that identifies and evaluates all of FEMA's federal financial assistance programs with potentially eligible uses of funds that include infrastructure as defined by BABAA to determine which programs would be in compliance with the Buy America preference and which would be considered inconsistent with section 70914 of BABAA and thus "deficient" as defined by section 70913(c) of BABAA. Pursuant to 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](#)), FEMA has developed a website where stakeholders can learn about the requirements of BABAA and it is also where FEMA will post proposed waivers for public comment. FEMA has issued a [Grant Alert](#) notifying stakeholders of the requirements of BABAA. The Grant Alert also provides a link to where stakeholders can access the list of [FEMA financial assistance programs for infrastructure subject and not subject to the requirements of BABAA](#) (also included at the end of this document as *Table A: FEMA Federal Financial Assistance Programs Subject to BABAA Buy America Preference*). FEMA has also established an intra-agency working group to coordinate the development of official FEMA policy and processes to fully implement the requirements of BABAA.

III. Waivers

Under section 70914(b), FEMA has authority to waive the application of a domestic

content procurement preference when (1) application of the preference would be contrary to the public interest, (2) the materials and products subject to the preference are not produced in the United States at a sufficient and reasonably available quantity or satisfactory quality, or (3) inclusion of domestically produced materials and products would increase the cost of the overall project by more than 25 percent. 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.

This waiver, future proposed and final waivers, and additional information about the waiver process 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

In this notice, FEMA received public comments on the proposed general applicability waiver of the Buy America preference to FEMA's federal financial assistance awards to provide the Agency with sufficient time to properly ensure compliance with the Buy America preference as required by BABAA. In fiscal year 2022, FEMA award recipients will receive more than \$4.1 billion through the Agency's programs where infrastructure is an eligible activity and may be subject to the Buy America preference. FEMA believes that full compliance with the Buy America preference will create ongoing demand for domestically produced products and deepen domestic supply chains. FEMA anticipates that in order to ensure full compliance with the Buy America preference, it will need to impose additional information collection requirements on recipients and subrecipients of federal financial assistance from FEMA. Specifically, FEMA expects such recipients and subrecipients to face additional paperwork

burdens in complying with the Buy America preference and in submitting requests for product or project specific waivers of the Buy America preference.

Many of FEMA's programs are subject to the Buy America preference and have previously not required compliance with similar Buy America preferences. Because the potential application of the Buy America preference mandated by BABAA is new to FEMA's federal financial assistance programs, FEMA does not have a full understanding of the impact on FEMA's programs. FEMA also does not have adequate information concerning the types of documentation that recipients and subrecipients must submit to demonstrate compliance with the Buy America preference and must develop a mechanism for seeking product- or project-specific waivers under BABAA. With the goal of timely implementing the new Buy America preference requirements, FEMA received public comments on whether the proposed waiver of the Buy America preference requirement for iron, steel, manufactured products, and construction materials under BABAA is in the public interest, and whether the waiver should be granted in order to provide sufficient time for FEMA to:

1. Seek information and feedback from SLTT governments and other recipients and subrecipients, as well as industry partners and other stakeholders on challenges and solutions;
2. Gather data on the sourcing of the full range of materials and products used in FEMA federal financial assistance for infrastructure projects and strategies to build up domestic capacity; and
3. Allow a reasonable adjustment period after OMB's issuance of final standards in order for FEMA, its recipients/subrecipients, industry partners, and other stakeholders to

develop and transition to the new compliance and certification processes for iron, steel, manufactured products, and construction materials.

Therefore, FEMA has determined that it would be contrary to the public's interest to apply the Buy America preference to federal financial assistance obligated by FEMA prior to completion of these processes. FEMA is hereby waiving the application of the Buy America preference to its federal financial assistance awards or funds obligated during the waiver period to allow for the completion of the processes as described and the receipt of approval from OMB for the appropriate information collections.

During the waiver period, FEMA expects to take rapid action to prepare for compliance with the new requirements, including, for example:

1. Promulgating Agency-wide policy and processes;
2. Ensuring Notices of Funding Opportunity and awards are updated as appropriate with applicable terms and conditions;
3. Developing and implementing a tribal consultation strategy;
4. Collaborating with industry partners to understand the market and best practices for evaluating requirements of BABAA;
5. Establishing certification processes for award recipients and subrecipients subject to BABAA;
6. Providing user-friendly guidance and training to FEMA staff and stakeholders;
7. Developing contract provisions for recipients and subrecipients to include in their contracts and subcontracts funded by FEMA federal financial assistance for infrastructure;

8. Ensuring contractors, subcontractors, and industry partners are prepared to certify compliance with Buy America requirements, provide all relevant information, and include required contract provisions prescribing Buy America requirements; and
9. Creating a tracking system to capture and analyze trends of waiver requests.

During the waiver period, FEMA will also coordinate with the General Services Administration (GSA) and the new OMB Made in America Office by ensuring there is appropriate cross-linking to websites. FEMA will also ensure staff is trained on using the upcoming GSA website, to be made available by November 2022, to ensure the waiver process runs smoothly.

By the end of the waiver period, FEMA expects award recipients and subrecipients, industry partners, and other stakeholders to be ready to implement the Buy America preference standards, consistent with BABAA and implementing guidance and standards. To the extent award recipients, subrecipients, industry partners, or other stakeholders seek future project-specific or broader waivers beyond this temporary waiver, they should be expected to provide rigorous justification of the lack of domestic availability, in addition to explaining the difficulty of complying and the need for an adjustment period.

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

Under OMB Memorandum M-22-11, “Memorandum for Heads of Executive Departments and Agencies,” published on April 18, 2022, 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 on the cost of foreign-sourced products. FEMA will perform additional market research during the duration of the waiver and consult with International Trade Administration (ITA) to better understand the market to limit the use of waivers caused by dumping of foreign-sourced products.

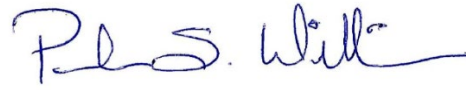
VI. Limited Duration of Waiver

FEMA is committed to the successful implementation of the important Buy America preference across its financial assistance infrastructure programs and will move swiftly towards completion of the processes outlined in this notice. This waiver is effective as of July 1, 2022 and will remain in effect for all FEMA financial assistance for infrastructure projects for six months, through January 1, 2023, or until FEMA publishes a notice extending the waiver or a final notice confirming the completion of the PRA process described. The Buy America preference requirements will not attach to awards or funding obligated during this waiver period and the Buy America preference requirements will only attach to any awards or funding obligated after this waiver period ends.

VII. Public Comments

As required under Section 70914 of BABAA, FEMA solicited comments from the public on the draft waiver on June 6, 2022 through June 21, 2022. In particular, FEMA invited interested industry partners to identify themselves and provide information on which of their products do or do not comply with the Made in America standards. After reviewing the

comments provided, FEMA concluded it was in the public interest to grant this waiver.

A handwritten signature in blue ink that reads "P.S. Williams". The signature is written in a cursive style with a long horizontal stroke at the end.

Pamela S. Williams
Assistant Administrator, Grant Programs Directorate
FEMA

Attachment: *Table A: FEMA Federal Financial Assistance Programs Subject to BABAA Buy America Preference*

Table A: FEMA Federal Financial Assistance Programs Subject to BABAA Buy America Preference

#	FEMA Grant Program Office	Assistance Listing Number	FEMA Grant Program
1.	GPD	97.044	Assistance to Firefighters Grant Program (AFG)
2.	FIMA	97.047	Building Resilient Infrastructure and Communities (BRIC)
3.	NPD	97.040	Chemical Stockpile Emergency Preparedness Program (CSEPP)
4.	ORR	97.024	Emergency Food and Shelter Program (EFSP – Regular & Humanitarian)
5.	GPD	97.042	Emergency Management Performance Grant Program (EMPG)
6.	GPD	97.052	Emergency Operations Center Grant Program (EOCGP)
7.	GPD	97.044	Fire Prevention & Safety (FP&S)
8.	FIMA	97.029	Flood Mitigation Assistance (FMA) (including Swift Current)
9.	GPD	97.067	Homeland Security Grant Program (HSGP)
10.	GPD	97.057	Intercity Bus Security Grant Program (IBSGP)
11.	GPD	97.075	Intercity Passenger Rail (IPR)
12.	NCP	TBD	Next Generation Warning System (NGWS)
13.	GPD	97.008	Nonprofit Security Grant Program (NSGP)
14.	GPD	97.056	Port Security Grant Program (PSGP)
15.	FIMA	97.047	Pre-Disaster Mitigation (PDM)
16.	FIMA	97.041	Rehabilitation of High Hazard Potential Dams (HHPD)
17.	FIMA	TBD	Safeguarding Tomorrow Through Ongoing Risk Mitigation (STORM) Act revolving loan fund
18.	GPD	97.083	Staffing for Adequate Fire and Emergency Response (SAFER)
19.	GPD	97.137	State and Local Cybersecurity Grant Program (SLCGP)
20.	GPD	97.075	Transit Security Grant Program (TSGP)
21.	GPD	97.137	Tribal Cybersecurity Grant Program (TCGP)
22.	GPD	97.067	Tribal Homeland Security Grant Program (THSGP)
23.	ORR	97.025	Urban Search & Rescue (US&R)

Legend for FEMA Grant Program Offices:

- FIMA - Federal Insurance and Mitigation Administration
- GPD - Grant Programs Directorate
- NCP - National Continuity Programs
- NPD - National Preparedness Directorate
- ORR - Office of Response and Recovery