



Buy America Preference in FEMA Financial Assistance Programs for Infrastructure

FEMA Interim 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). This memo provides implementation guidance for federal agencies on the application of a domestic preference to federal financial assistance programs for infrastructure and a transparent process to waive such preference, when necessary.

PURPOSE

The purpose of this interim 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 May 14, 2022, as well as new funding FEMA obligates to existing awards or through renewal awards where the new funding is obligated on or after May 14, 2022.¹

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 by which to consider BABAA waiver requests and criteria to apply when making decisions on waivers.

¹ 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 is effective from July 1, 2022, and will remain in effect for six (6) months, through January 1, 2023. The domestic preference requirements will not attach to awards or funding obligated during this waiver period and will only attach to awards or funding obligated on or after January 2, 2023.



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 May 14, 2022, as well as new funding FEMA obligates to existing awards or through renewal awards on or after May 14, 2022, must comply with the following domestic preference requirements²:

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 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.
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.

B. FEMA FINANCIAL ASSISTANCE PROGRAMS

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

C. INFRASTRUCTURE PROJECTS

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

² BABAA §§ 70914(a), 70912(2) & (6)(B); M-22-11.



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.
2. *Infrastructure*, for the purposes of BABAA, includes, at a minimum, the structures, facilities, and equipment for, in the United States, 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. Infrastructure includes facilities that generate, transport, and distribute energy.
3. If FEMA has determined that no funds from a particular award under a subject financial assistance program will be used for infrastructure, a domestic preference does not apply to that award. Similarly, a domestic preference does not apply to non-infrastructure spending under an award that also includes a covered project. A domestic preference applies to an entire infrastructure project, even if it is funded by both federal and non-federal funds under one or more awards.
4. Examples of FEMA projects where the domestic preference does not apply include technical assistance, management costs, and debris removal projects. Under [Hazard Mitigation Assistance Programs](#) examples of projects and activities where the domestic preference does not apply include design and planning (although domestic preferences must be considered in 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. 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), would not constitute an infrastructure project. The domestic preference requirements would also not apply to nonresidential structures³ that are privately owned and do not serve a public function.⁴

³ [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.

⁴ 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 can certify compliance with the requirements of the BABAA.

1. All Notices of Funding Opportunities (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 fema-gpd-policy@fema.dhs.gov.
3. All recipient and subrecipient contracts under FEMA financial assistance awards for infrastructure issued on or after May 14, 2022, must include a contract provision explaining the BABAA requirements and a self-certification where contractors can certify compliance with domestic preference requirements outlined in the BABAA Requirements section of this policy.
 - a. 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.

1. FEMA may waive the application of a domestic preference under a financial assistance program in any case in which the FEMA Administrator (or the relevant FEMA



Associate/Assistant Administrator in charge of a financial assistance program, acting as the Administrator's designee) finds that⁵:

- 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").

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 consider issuing 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

FEMA will consider issuing waivers with specific conditions that support the BABAA policies.

⁵ BABAA § 70914(b).



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 the requested waiver is in the public interest granting a waiver 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 steel⁶, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products.⁷
- b. Examples of public interest waivers may include:
 - i. De minimis: Ease of administration is important to reduce burden for recipients and FEMA. FEMA may consider whether a general applicability public interest waiver should apply to infrastructure project purchases below a de minimis threshold. FEMA may consider whether a public interest waiver should apply when necessary to ensure that recipients and FEMA make efficient use of limited resources, especially if the cost of processing the individualized waiver(s) would risk exceeding the value of the items waived. FEMA may consider adopting an agency-wide public interest waiver that sets a de minimis threshold, for example, of 5% of project costs up to a maximum of \$1 million.
 - ii. Small Grants/Projects: FEMA may consider whether it is in the public interest to waive application of a domestic preference to awards or projects below the Simplified Acquisition Threshold.
 - iii. Minor Components: FEMA may consider whether it is in the public interest to allow minor deviations for miscellaneous minor components within iron and steel products. A minor components waiver in the public interest may allow non-domestically produced miscellaneous minor components comprising no

⁶ 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.

⁷ 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*).



more than 5% of the total material cost of an otherwise domestically produced iron and steel product to be used. It would not be in the public interest to use a minor components waiver to exempt a whole product from the iron and steel requirements, or to allow the primary iron or steel components of the product to be produced other than domestically.

- 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.

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 assistance from the agency, 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.

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, 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 or 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.

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.

D. INTERIM WAIVER PROCESS

Outcome: Requests for waiver of a domestic preference by FEMA recipients and subrecipients are submitted and considered using a transparent process. See "FEMA BABAA Interim Waiver Process Workflow" hereto attached as [Appendix E](#). FEMA estimates that the timeline for most waiver requests will be 45 calendar days from date of submission until final waiver determination is made. For renewals of general applicability waivers, FEMA estimates the timeline to be 60 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. Recipients 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," hereto attached as [Appendix C](#).
 - b. Recipients must submit waiver requests to a FEMA grant representative. Subrecipients must coordinate with their pass-through agency, so they formally submit the request or endorse the submittal.
 - 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.



FEMA

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.

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 waivers (including all initial waiver requests) for 15 calendar days public comment period on the [FEMA Build America, Buy America website](#) or the U.S. General Services Administration (GSA) Made in America Office website (not available until November 15, 2022). 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.

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](#).

F. EXCEPTIONS FOR UNFORSEEN AND EXIGENT CIRCUMSTANCES

Outcome: Justification for FEMA-approved waivers in unforeseen and exigent circumstances are properly documented.



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1. As an exception to the public transparency BABAA requirements, FEMA has the authority to waive application of domestic preferences without submitting the waiver for public comment and MIAO determination, only when necessary.
2. Within 30 calendar days of waiver issuance, FEMA must submit a report to MIAO justifying its “unforeseen and exigent circumstances.”

A handwritten signature in blue ink that reads "P.S. Williams".

Pamela S. Williams
Assistant Administrator
Grant Programs Directorate

_11/16/22_____
Date



ADDITIONAL INFORMATION

REVIEW CYCLE

FEMA Interim Policy #207-22-0001, Buy America Preference in FEMA Financial Assistance Programs for Infrastructure, will be reviewed, reissued, revised, and/or rescinded within one year 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 C.F.R. § 200.1.](#)

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.](#)
- B. [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

Construction Materials: Includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:



- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall⁸.

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.⁹

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 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.¹⁰

Infrastructure: Includes, at a minimum, the structures, facilities, and equipment for, in the United States, 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. Infrastructure includes facilities that generate, transport, and distribute energy.¹¹

Produced in the United States: For iron or steel products, it means all manufacturing processes from initial melting stage through application of coatings must occur in the United States; for manufactured products, it means the product was manufactured in the United States, the cost of product components that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components; and for construction materials, it means all manufacturing processes occurred in the United States.¹²

Project: The construction, alteration, maintenance, or repair of infrastructure in the United States.¹³

⁸ BABAA § 70917(c)(1).

⁹ BABAA § 70912(2).

¹⁰ BABAA § 70912(4); 2 C.F.R. § 200.1 Federal financial assistance.

¹¹ BABAA § 70912(5).

¹² BABAA § 70912(6).

¹³ BABAA § 70912(7).



QUESTIONS

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



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 – Regular & Humanitarian)	97.024
Emergency Management Performance Grant Program (EMPG)	97.042
Emergency Operations Center Grant Program (EOCGP)	97.052
Fire Prevention & Safety (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)	TBD
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
Safeguarding Tomorrow Through Ongoing Risk Mitigation Revolving Loan Fund (Safeguarding Tomorrow RLF)	97.139



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Staffing for Adequate Fire and Emergency Response (SAFER)	97.083
State and Local Cybersecurity Grant Program (SLCGP)	97.137
Transit Security Grant Program (TSGP)	97.075
Tribal Cybersecurity Grant Program (TCGP)	97.137
Tribal Homeland Security Grant Program (THSGP)	97.067
Urban Search & Rescue (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 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
Individuals and Households Program – Other Needs Assistance (INP – ONA)	97.050



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
State Fire Training Systems Grant Program (SFTS)	97.043
Targeted Violence and Terrorism Prevention (TVTP)	97.132



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.
- 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:



FEMA

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 Interim Waiver Process Workflow

