

Build America, Buy America Act Frequently Asked Questions (FAQs)

Release Date: mayo 3, 2024

Frequently asked questions on the Build America, Buy America Act Frequently Asked Questions.

General

What are the requirements of the Build America, Buy America Act (BABAA)?

BABAA requires that certain FEMA award recipients and subrecipients comply with the following domestic preference requirements:

1. All iron and steel items 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 used in the project are produced in the United States. This means the manufactured product was manufactured in the United States; and 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.
3. All construction materials are manufactured in the United States—this means that all manu

Recipients and subrecipients must ensure their contracts, including purchase orders, subject to BABAA include a required contract clause and self-certification of compliance pursuant to [FEMA Interim Policy #207-22-0001: Buy America Preference in FEMA Financial Assistance Programs for Infrastructure](#).

How do you determine the cost of components for manufactured products?

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:



FEMA

1. 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
2. For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a) allocable overhead costs, but excluding profit. Costs of components does not include any costs associated with the manufacture of the manufactured product.

Construction material standards. The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2. Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3. Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4. Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, non-ferrous metals, plastic and polymer-based products, or any others.
5. Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
6. Lumber. All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.



7. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
8. Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Applicability

Which FEMA financial assistance programs are subject to Build America, Buy America Act (BABAA) domestic preference requirements?

There are currently 23 FEMA financial assistance programs subject to BABAA. For a complete list please [click here](#).

Which FEMA financial assistance programs are NOT subject to the BABAA requirements?

There are currently 29 FEMA financial assistance programs not subject to BABAA. For a complete list please [click here](#).

NOTE: Most disaster financial assistance programs are not subject to BABAA requirements, including the Public Assistance, Hazard Mitigation Grant Program, Individual Assistance, and Fire Mitigation Assistance Grant programs

When do the BABAA requirements apply to FEMA financial assistance programs?

Under FEMA financial assistance programs, the BABAA requirements apply to:

1. New awards made on or after Jan. 2, 2023, and
2. New funding FEMA obligates to existing awards or through renewal awards on or after Jan. 2, 2023.

The BABAA requirements went into effect May 14, 2022. However, FEMA determined that it was in the public interest to issue a [general applicability waiver of the BABAA requirements](#) allowing for a temporary adjustment period for FEMA, its recipients/subrecipients, industry partners, and other stakeholders to transition to



FEMA

the new compliance and certification process for iron, steel, manufactured products, and construction materials. This waiver period was effective from July 1, 2022, and expired Jan. 1, 2023. The BABAA domestic preference requirements therefore apply to awards or funds obligated on or after Jan. 2, 2023. The requirements do not apply to awards or funds obligated during the six-month waiver period.

What types of projects are subject to domestic preference for procurement under BABAA requirements?

Domestic preferences for procurements under BABAA only apply to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, BABAA 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 Buy America 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.

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 also includes facilities that generate, transport, and distribute energy.

BABAA applies to an entire infrastructure project, even if it is funded by both federal and non-federal funds under one or more awards.

If FEMA determines that no funds from a particular award under a subject financial assistance program will be used for infrastructure, BABAA does not apply to that award. Similarly, BABAA does not apply to non-infrastructure spending under an award that also includes a covered project.

What types of projects are NOT subject to BABAA requirements?



Based on guidance from the Office of Management and Budget's (OMB) Made in America Office (MIAO), non-infrastructure costs such as technical assistance, debris removal, and management costs are not subject to BABAA requirements. More information can be found on the BABAA Best Practices guide.

Under the Hazard Mitigation Assistance (HMA) grant programs, BABAA does not apply to design and planning (although BABAA 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 activities; 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 for personal use (i.e., not serving a public function) do not constitute an infrastructure project. BABAA requirements also do not apply to nonresidential structures that are privately owned and do not serve a public function (e.g., a business).

If the project does not receive funding from IIJA, does BABAA still apply?

Yes, BABAA applies to any funding from a subject FEMA program. For a full list of FEMA financial assistance programs subject to BABAA, please see [Programs and Definitions: Build America, Buy America Act](#).

Do BABAA requirements apply to the purchase of generators? Are there distinctions between portable and permanent generators?

BABAA only applies to articles, materials and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. BABAA does not apply to building appliances (e.g., microwaves, refrigerators, dishwashers, etc.), air conditioning units, 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.

Are purchases such as fire trucks and firefighting equipment under the Assistance to Firefighter Grant program exempt?



BABAA only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. FEMA has determined fire trucks and ambulances to be "rolling stock" because they are not permanently affixed to an infrastructure project and therefore are not subject to BABAA.

Do BABAA requirements apply to the Flood Mitigation Assistance (FMA) or Building Resilient Infrastructure and Communities (BRIC) program for elevation or mitigation reconstruction for homes?

Projects consisting solely of the purchase, construction, or improvement of a private home, such as a single or multi-family residential structure, for personal use (i.e., not serving a public function) do not constitute an infrastructure project. BABAA requirements also do not apply to nonresidential structures that are privately owned and do not serve a public function. Additional information can be found on page 3 of the [FEMA Policy #207-22-0001: Buy America Preference in FEMA Financial Assistance Programs for Infrastructure](#).

If FEMA funds were obligated before Jan. 2, 2023, does that mean the purchases under this award are exempt from BABAA? Also, if subsequent obligations are made to the same project, on or after Jan. 2, 2023, does BABAA apply?

BABAA 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.

FEMA issued a [Six-Month General Applicability Waiver](#) of the BABAA requirements for all FEMA award recipients and subrecipients to allow for an adjustment period. This waiver was in effect from July 1, 2022, to Jan. 1, 2023. If FEMA issued the financial assistance award or funding during the Six-Month General Applicability Waiver period, then the award is not subject to the BABAA requirements for the lifetime of that award funding. If additional funding is obligated to a project after Jan. 2, 2023, then BABAA provisions do apply to those subsequently obligated funds.

Definitions



FEMA

The infrastructure definition includes "buildings and real property." Does this mean that BABAA requirements apply to projects that involve individual property projects such as ignition resistant construction retrofits, structure elevations for residential properties, and other individual residential retrofits?

BABAA does not apply to projects that involve privately-owned individual residential structures, such as ignition resistant construction retrofits, structure elevations for residential properties, or other individual residential retrofits. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use would not constitute an infrastructure project, as they do not serve a public function.

How do BABAA requirements apply to items "attached" to infrastructure such as a microwave relay attached to a communications tower?

Domestic preferences under BABAA apply to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. If a microwave relay is used at or within the finished infrastructure project but is not an integral part of or permanently affixed to the structure, then BABAA would not apply. If BABAA is applicable, then the microwave relay would have to be domestically produced or the cost of components 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.

Are "reasonably available quantities" defined?

The most recent BABAA-related memorandum, M-24-02, does not specifically define "reasonably available quantities." However, FEMA may waive the application of BABAA under a financial assistance program when the FEMA Administrator or designee finds that 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. This waiver type will be reviewed on a case-by-case basis, but generally based on whether the products are available in sufficient quantity or quality at the time required for the project. This is called a nonavailability waiver. Additional information for waiver application can be found at: ["Buy America" Preference in FEMA Financial Assistance Programs for Infrastructure.](#)



FEMA

Do manufactured products need to be assembled in America?

Yes, all manufactured products used in covered projects must be produced in the United States. This means the manufactured product was manufactured in the United States, and 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.

Are the interpretations of a "manufactured product" and "construction material" defined federally or state-by-state?

Those product categories are federally defined. Please refer to OMB's M-24-02 for additional clarification on these terms.

Material Applicability

Are additions to buildings for target hardening such as bollards and reinforced glass subject to BABAA requirements?

If additions to public buildings for target hardening are funded by a subject FEMA program, and incorporated into, or affixed to, an infrastructure project, then BABAA provisions apply.

Is the installation of fencing around a building included in the definition of infrastructure?

Fencing may be considered infrastructure, depending on whether it is temporary or permanent fencing. If a project has specific questions about this situation, they should direct their inquiry to fema-grants-buyamerica@fema.dhs.gov.

Are security video cameras attached to the structures or radio towers also subject to BABAA requirements?

BABAA does not apply to "removable" objects that are not an integral part of the structure or permanently affixed to the infrastructure project. For example, security cameras or fire/smoke/carbon monoxide detectors are not subject to the domestic preference requirements because they are removable and are not an integral part of the structure. This same reasoning applies to air conditioning units and building



FEMA

appliances within the infrastructure project; they are not an integral part of or permanently affixed to the structure. For equipment that is permanently affixed to infrastructure or that is integral to the structure and remains in a permanent location the equipment is subject to BABAA requirements.

Do the BABAA requirements apply to products such as base stations and repeaters that are affixed to static locations?

If communication radios, base stations, and repeaters are not an integral part of, or permanently affixed to the infrastructure project they would not be subject to BABAA.

Are temporary construction materials such as formwork subject to BABAA Buy America?

BABAA does not apply to temporary construction materials such as formwork. Similarly, BABAA 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.

Are computers sold in the United States considered domestically produced if they contain foreign components?

To meet the definition of a manufactured product, the manufactured product must be manufactured in the United States; and 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. However, BABAA requirements do not 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.

Would windows, doors or fencing be considered infrastructure?

If windows and doors are permanently installed at the project site, they are considered infrastructure. Fencing may be considered infrastructure, depending on whether it is temporary or permanent fencing. If a project has specific questions about this situation, they should direct their inquiry to fema-grants-buyamerica@fema.dhs.gov.



Are commercial generators covered under BABAA?

BABAA does not apply to commercial generators that are used at or within the finished infrastructure project but are not an integral part of or permanently affixed to the structure.

Does a warning siren count as infrastructure?

Products must comply with BABAA if they are permanently affixed to, or incorporated into, an infrastructure project. If warning sirens are not an integral part of, or permanently affixed to the infrastructure project they would not be subject to BABAA.

Do BABAA requirements apply to raw materials only?

No. BABAA requirements apply to raw materials and to manufacturing processes. The Infrastructure Investment and Jobs Act (“IIJA”) outlines these requirements:

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 used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and 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.

As for iron and steel products, do the BABAA requirements apply solely to metal structures and beams or is this also applicable to any iron and steel used inside a manufactured product?



BABAA applies to all iron and steel products, not just metal structures, and beams. It also applies to iron and steel within a manufactured product.

Are products that are partially manufactured offshore and completed in the United States BABAA-compliant?

Manufactured products must be produced in the United States to be BABAA-compliant. This means the manufactured product was manufactured in the United States, and 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.

Can a contract be awarded to --- for example, a Canadian vendor --- that has a license to do business in the U.S. to complete a project using 55% United States-made manufacturing materials?

BABAA requirements apply to project materials including iron and steel, manufactured products, and construction materials. BABAA requirements apply to materials permanently incorporated into infrastructure projects and not to vendors or suppliers.

A Canadian vendor would be required to incorporate products which meet the requirements of BABAA into the infrastructure project if the project is funded by a program subject to BABAA.

It is important to note that all manufactured products used in covered projects must be produced in the United States. This means the manufactured product was manufactured in the United States, and 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.

If we have a 100% complete engineering design before the FEMA grant is obligated, are we expected to redesign to meet BABAA?



If an infrastructure project is subject to BABAA, then the BABAA domestic preference requirements apply. If BABAA was not considered during the design phase, and it is not possible to achieve compliance with the BABAA requirements during the infrastructure project phase, recipients may consider seeking a waiver of the BABAA requirements based on the allowable waiver types (nonavailability, unreasonable costs, and public interest). Please see FEMA's BABAA [Best Practices guide](#) for more information on waiver requests.

Compliance

What should FEMA award recipients and subrecipients include in contract documents to communicate BABAA requirements to their contractors?

Recipients and subrecipients must ensure their contracts, including purchase orders, subject to the BABAA requirements include a required contract clause and self-certification of compliance pursuant to [FEMA Policy #207-22-0001: Buy America Preference in FEMA Financial Assistance Programs for Infrastructure](#).

Is the letter of certification obtained during the application phase or the post-award phase?

Best practice is for the recipient and subrecipients to obtain contractor self-certifications at the beginning of the contract, before products or materials have been purchased, so all parties are aware of the BABAA requirements. Recipients and subrecipients (or their contractors) should obtain BABAA product certification letters for each product subject to BABAA as products are ordered and delivered, as noted in the [FEMA Policy #207-22-0001: Buy America Preference in FEMA Financial Assistance Programs for Infrastructure](#). FEMA will review for this as a part of their grants management review process.

Besides the "Certification Letter", is there any procedure to "test" BABAA compliance?

To ensure BABAA compliance, all recipient and subrecipient contracts under FEMA financial assistance awards for infrastructure, issued on or after Jan. 2,



2023, must include a contract provision explaining the BABAA requirements and a self-certification where contractors can certify compliance with domestic preference requirements outlined in BABAA, unless FEMA waives the BABAA requirement. As an additional step to ensure compliance when purchasing products for the project, FEMA award recipients or subrecipients may request a certification letter from the product manufacturer to demonstrate compliance with BABAA requirements.

Can you furnish a sample letter of certification?

Sample certification letters are available in FEMA's [BABAA Best Practices guide](#).

Do you have to amend a contract if a project has not started yet?

Contracts under FEMA awards that are subject to BABAA must include the required contract provision and self-certification. If a contract has already been awarded, and it does not include the required clause and self-certification, recipients and subrecipients may be able to amend their contract to become compliant with these requirements, if allowable under state, local, tribal, or territorial laws. Please see the [BABAA Policy](#) and the [BABAA Best Practices Guide](#) for sample language.

How is compliance measured?

FEMA will be reviewing contracts to make sure contract clauses and contractor self-certifications are included.

What if you have drafted and provided the contract and sent it out to the vendor and it does not contain the exact BABAA language but does have a BABAA provision?

Contracts under FEMA awards that are subject to BABAA must include the necessary contract clause and contractor self-certification. If allowable under state, local, tribal, or territorial laws, recipients may wish to consider amending their solicitations or contract awards to include the necessary BABAA contract language. Please see the [FEMA Policy #207-22-0001: Buy America Preference in FEMA Financial Assistance Programs for Infrastructure](#) and FEMA's [BABAA Best Practices guide](#) for sample language.



Do documentation and contract clauses apply to all federally funded programs?

The BABAA documentation and contract clauses apply to FEMA assistance programs subject to BABAA.

Funding

What if there is an award before Jan. 2, 2023, but a cost overrun with additional federal share after Jan. 2, 2023. Would the project then be subject to BABAA?

Although the BABAA requirements initially took effect government-wide on May 14, 2022, FEMA issued a [Six-Month General Applicability Waiver](#) of the BABAA requirements for all FEMA award recipients and subrecipients to allow for an adjustment period. This waiver was in effect from July 1, 2022, to Jan. 1, 2023.

If FEMA issued the financial assistance award or funding during the Six-Month General Applicability Waiver period, then the award is not subject to the BABAA requirements for the lifetime of that award funding. If FEMA issued the financial assistance award or funding after the Six-Month General Applicability Waiver period, then the award is subject to BABAA.

If additional funding is obligated to a project after Jan. 2, 2023, then BABAA provisions do apply to those subsequently obligated funds.

In the scenario described, the cost overrun would be subject to the BABAA requirements. However, if BABAA was not considered for prior award phases (e.g., planning or design) and the application of BABAA would increase costs, which is not allowable under certain programs, then recipients may seek a waiver of the BABAA requirements under one of the allowable waiver types (nonavailability, unreasonable costs, or public interest). Please see FEMA's [BABAA Best Practices guide](#) for additional information.

What about multi-year contracts entered before 2023 and funded by various awards after 2023?



Funding obligated by FEMA on or after Jan. 2, 2023, would be subject to BABAA requirements regardless of whether there is a multi-year contract in place.

If allowable under applicable state, local, tribal, or territorial laws, recipients may want to consider amending their contracts to become compliant with BABAA by adding the required Contract Provision and Self Certification. Please see the [FEMA Policy #207-22-0001: Buy America Preference in FEMA Financial Assistance Programs for Infrastructure](#) and FEMA's [BABAA Best Practices guide](#) for sample language.

However, if BABAA was not considered for the original multi-year contract(s) then recipients might seek a waiver from BABAA requirements under one of the allowable waiver types (nonavailability, unreasonable costs, or public interest). Please see FEMA's [BABAA Best Practices guide](#) for additional information.

Would the funds be considered 'obligated' at the release date of the Notice of Funding Opportunity since it contains allocation tables for award recipients?

No. Obligation occurs when FEMA notifies the recipient of the financial assistance award. This is generally done by an award notification letter. The date of that financial assistance award notification letter is the key date that determines whether BABAA applies.

1. If the award notification letter was issued on or after May 14, 2022, and before July 1, 2022, then BABAA applies.
2. If the award notification letter was issued during FEMA's [Six-Month General Applicability Waiver](#) of the BABAA requirements for all FEMA award recipients and subrecipients to allow for an adjustment period from July 1, 2022 to Jan. 1, 2023, then BABAA does not apply.
3. If the award notification letter was issued on or after Jan. 2, 2023, then BABAA does apply.

On infrastructure contracts that are funded by a mix of FEMA and other federal agency funding, how does a recipient comply with FEMA's certification and BABAA requirements with other federal agency BABAA requirements?



FEMA

OMB [M-24-02](#) provides guidance; "To avoid a need for duplicative waiver requests from entities that receive funding for one infrastructure project through multiple federal agencies, the federal agency contributing the greatest amount of federal funds for the project should be considered the "Cognizant Agency for Made in America" and should take responsibility for coordinating with the other federal awarding agencies."

Waivers (General Applicability, De Minimis, Small Projects, Project-Specific)

Can FEMA waive the BABAA requirements under a financial assistance program?

Yes. FEMA may waive the application of a domestic preference under a financial assistance program when the FEMA Administrator (or the relevant FEMA Associate/Assistant Administrator in charge of a financial assistance program, acting as the Administrator's 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 would increase the cost of the overall project by more than 25% (an "unreasonable cost waiver").

For additional information on waivers, including waiver criteria, waiver types, and FEMA's interim waiver process, please see [FEMA Policy #207-22-0001: Buy America Preference in FEMA Financial Assistance Programs for Infrastructure](#).

Where will notice of public interest waivers be posted?

All FEMA approved waivers will be posted on FEMA's website at <https://www.fema.gov/grants/policy-guidance/buy-america>.

How long does waiver review take?



FEMA estimates that the timeline for review and determination of most waiver requests will be no less than 60 calendar days from date of submission. 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.

Who is the FEMA grant representative and what roles are they responsible for?

The FEMA grant representative is the recipient's FEMA point of contact for their federal financial assistance. Depending on the grant program, it may be a representative at FEMA Headquarters or located in a FEMA Regional Office. This representative will review the waiver requests for completeness and then submit the waiver to FEMA's Grant Programs Directorate (GPD) for technical review. Once FEMA GPD's review is complete, FEMA GPD will route to the MIAO for review, post for public comment and make a final waiver determination. FEMA GPD will notify the FEMA grant representative of the decision and the FEMA grant representative is responsible for notifying the grant recipient of the waiver decision.

I am a recipient requesting a project-specific waiver. Who should my request be addressed to and where should I send it?

Recipients and subrecipients will submit the waiver request to their FEMA grant representative.

Since the Buy America requirements will impact project costs, should I submit a waiver request before or after submitting a sub-application (including required budget estimate) to FEMA?

Best practice is to submit a BABAA waiver request as soon as it is known that a waiver will be needed. Please refer to FEMA's [BABAA Best Practices guide](#).

How much time will the waiver adjudication process take?

FEMA estimates that the timeline for review and determination of most waiver requests will be no less than 60 calendar days from date of submission. For renewals of general applicability waivers, FEMA estimates the timeline to be approximately 75 calendar days from date of submission until final waiver



determination is made due to allow for the required longer public comment period.

Does FEMA currently have waivers to the BABAA requirements?

Yes, the FEMA waivers can be found at [fema.gov/grants/policy-guidance/buy-america](https://www.fema.gov/grants/policy-guidance/buy-america). Once FEMA posts additional waivers, we will expand this section to describe them.

Does the 25% cost waiver apply to entire project cost or to the cost of a product?

FEMA may waive the application of a Buy America preference under a financial assistance program 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%.

How is the De Minimis Waiver applied?

The De Minimis Waiver allows a project to incorporate products of foreign or unknown origin up to 5% of the cost of materials subject to BABAA, with a cap of \$1 million. The De Minimis percentage allowance will be based on the final materials costs subject to BABAA. Recipients and subrecipients are encouraged to track De Minimis items to ensure they are in compliance with applicable limitations.

Does FEMA have a waiver for products that are brought to the construction site and removed by the completion of the project?

No, because BABAA does not apply to tools, equipment, or supplies brought to the construction site and removed at or before the completion of the infrastructure project.

Are there any waivers currently for fiber optic products which are not manufactured in the United States?

No, there are not currently any project-specific or general applicability waivers that apply to fiber optic products.

Is there a waiver for small projects under \$250,000?



The Small Projects General Applicability Waiver waives the BABAA requirements for projects under FEMA awards or subawards where the total project cost does not exceed the federal simplified acquisition threshold (currently set at \$250,000). If the total project cost is under \$250,000, the projects do not have to comply with the BABAA provisions. The Small Projects General Applicability Waiver is available at: https://www.fema.gov/sites/default/files/documents/fema_babaa-public-interest-small-projects.pdf

Is there a waiver for electronic components/semiconductors or do they need to be sourced from the United States?

Although a general applicability waiver is not currently available for those products, FEMA may consider product-specific general applicability waivers for products for which there are well-established domestic sourcing challenges.

In addition, project-specific waivers might be considered by recipients and subrecipients of projects for which these products may not be available domestically.

Information for submitting a waiver can be found by visiting "[Buy America Preference in FEMA Financial Assistance Programs for Infrastructure](#)".

What steps will FEMA take if domestic manufacturers are not able to provide sufficient quantities of BABAA-compliant products due to a natural disaster or similar circumstance?

FEMA may waive the application of a BABAA requirements under a financial assistance program when the FEMA Assistant Administrator for the Grant Programs Directorate or designee finds that 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.

How do I apply for a Small Project, De Minimis, or Minor Components Waiver?

These General Applicability Waivers do not require a separate project-specific application or approval by FEMA.



1. The [Small Projects Waiver](#) waives the BABAA requirements for infrastructure projects under FEMA awards or subawards where the total project cost does not exceed the federal simplified acquisition threshold (currently set at \$250,000).
 1. Recipients and subrecipients do not need to apply for this waiver. However, they must maintain documentation showing that the total project costs are less than the federal simplified acquisition threshold of \$250,000, and that each project using the waiver is distinct from other projects. This documentation must be maintained in project records provided to FEMA grant representatives upon request.
 2. The [De Minimis Waiver](#) waives the BABAA requirements for up to 5% of the total material costs subject to BABAA, not to exceed \$1 million. This waiver is intended for project use.
 1. Recipients and subrecipients that use this waiver must maintain documentation demonstrating compliance with the de minimis waiver, including tracking the cost of products claimed under the de minimis waiver and total applicable project cost. Recipients and subrecipients can complete tracking with a simple spreadsheet that totals the product costs included under de minimis and compares the total de minimis costs to the 5% de minimis allowance or \$1 million, whichever is lower.
2. The [Minor Components Waiver](#) waives the BABAA requirements for up to 5% of the total materials costs for an otherwise domestically produced iron or steel product.
 1. This waiver is intended for product manufacturers to use and does not exempt the iron and steel product from the BABAA requirement, and the primary iron and steel components of the product must be produced domestically.

FEMA encourages manufacturers to provide award recipients with product-specific certifications verifying BABAA compliance. If a manufacturer provides a certification, award recipients must store and maintain these in their project files. The manufacturer should indicate in the certification letter that the manufacturer is using the minor components waiver for the specified product.

For additional information on FEMA's General Applicability Waivers, including best practices for documenting compliance for each waiver, please see the [BABAA: Applying the General Applicability Waivers FEMA Fact Sheet](#).



FEMA

For the Small Projects Waiver, what if total project costs increase to over \$250,000 after the initial award is made?

The [Small Projects Waiver](#) waives the BABAA requirements for infrastructure projects under FEMA awards or subawards where the total project cost does not exceed the federal simplified acquisition threshold (currently set at \$250,000). In the event of unplanned cost overages and overruns that increase project costs over \$250,000, all additional purchases are subject to and must comply with BABAA unless otherwise waived.

The recipient might seek a waiver from BABAA requirements under one of the allowable waiver types (nonavailability, unreasonable costs, or public interest). Please see FEMA's BABAA Best Practices guide for additional information.

Additional Information

Additional information, including definitions, can be found at ["Buy America" Preference in FEMA Financial Assistance Programs for Infrastructure](#). You can also refer to the Office of Management and Budget's [Made in America Office Website](#) and the [Build America, Buy America Factsheet and FAQs for Award Recipients \(whitehouse.gov\)](#).



FEMA