



**FEMA**

**July 23, 2023**

**Re: Public Interest: Minor Components of Iron and Steel Products General Applicability Waiver of Section 70914(a) of P.L. 117-58, Build America, Buy America Act, 2021 for Federal Emergency Management Agency (FEMA) Financial Assistance Awards**

**AGENCY:** Grant Programs Directorate, FEMA

**ACTION:** Notice

**SUMMARY:** In accordance with the Build America, Buy America Act (BABAA), this notice advises that FEMA grants a general applicability waiver to the Buy America Domestic Content Procurement Preference (“Buy America preference”) as applied to minor components within an iron and steel product. This waiver will permit FEMA federal financial assistance for infrastructure projects to use non-domestically produced miscellaneous iron and steel minor components comprising no more than five percent of the total material cost of an otherwise domestically produced iron and steel product. This waiver does not exempt the whole iron and steel product from the BABAA requirement, and the primary iron and steel components of the product must be produced domestically.

**DATES:** This waiver is effective upon approval date, which is **July 23, 2023**, and will remain in effect for all awards or funding obligated to recipients and subrecipients of FEMA federal financial assistance infrastructure projects for five years from the approval date. As FEMA develops efficient waiver review capabilities, FEMA will review this waiver within five years of the date on which the waiver was issued or more often as appropriate to determine its continued utility, applicability and relevance with FEMA’s missions and goals consistent with the Infrastructure Investments and Jobs Act (IIJA), and the Office of Management and Budget (OMB)

**SUPPLEMENTARY INFORMATION:**

**I. Build America, Buy America**

The Build America, Buy America Act (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 it 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.

**II. 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. Information on this waiver may be found on FEMA's website at: <https://www.fema.gov/grants/policy-guidance/buy-america>.

### **III. Public Interest in a General Applicability Waiver of Buy America Provisions for Minor Components**

The purpose of this waiver is to permit FEMA federal financial assistance for infrastructure projects to use non-domestically produced miscellaneous iron and steel minor components comprising no more than five percent of the total material cost of an otherwise domestically produced iron and steel product. This waiver would not exempt the whole iron and steel product from the BABAA requirement, and the primary iron and steel components of the product must be produced domestically.

The purpose of this waiver is to reduce the administrative burden to iron and steel manufacturers who have reported significant compliance challenges for products that are otherwise domestically produced but contain miscellaneous iron and steel minor components, the origin of which cannot be reliably tracked or determined. Due to these challenges, communities receiving FEMA financial assistance are generally unable to obtain a range of BABAA-compliant iron and steel products that contain 100 percent domestic components. Absent this waiver, these communities would incur a significant administrative burden attempting to source these products and, if unavailable, pursuing project-specific waivers.

This waiver would allow manufacturers of iron and steel products to utilize a small portion (up to five percent by product material cost) of nondomestic or unknown origin iron and steel minor components within their otherwise domestically manufactured iron and steel products. Manufacturers typically purchase these low-cost, miscellaneous minor components in bulk and, absent this waiver, would incur excessive costs associated with establishing and managing duplicative inventories for production lines. Minor components are not the specific

parts purchased to be assembled at a project, but the components of a product which comprise no more than five percent of the total material cost of an otherwise domestically produced iron and steel product as sold by that manufacturer.

This Minor Components waiver will reduce administrative burden on manufacturers and ensure that their iron and steel products comply with Build America, Buy America even if that product includes a minor amount of iron or steel, or an iron or steel component that is of nondomestic or unknown origin

The BABAA requirements apply to [23 FEMA financial assistance programs](#). FEMA award recipients are anticipated to receive more than \$4.1 billion with fiscal year 2022 funding through the Agency's programs where infrastructure is an eligible activity and may be subject to the Buy America preference. FEMA only anticipates this waiver being used for a subset of iron and steel products by product manufacturers.

FEMA consulted with iron and steel manufacturers regarding the need for, and scope of a potential minor component waiver for iron and steel products. Based on feedback provided by industry stakeholders, the five percent threshold for minor components is reasonable and aligns with BABAA minor components waivers across other federal agencies, including the Environmental Protection Agency (EPA) and the United States Department of Agriculture (USDA). Manufacturers stressed the importance of consistency across federal agencies, which keeps costs down as manufacturers do not need to establish and maintain multiple product lines to meet multiple requirements.

Manufacturers also stated that absent a waiver, miscellaneous iron and steel components are difficult to acquire from domestic sources or their origins are unknown. The lack of a minor component waiver for iron and steel products would prevent manufacturers from being able to offer BABAA-compliant products for infrastructure projects subject to

BABAA, forcing a recipient to request a waiver for non-domestically sourced product.

The minor components waiver is appropriate for FEMA programs because it would reduce administrative burden by not requiring manufacturers to track and count these minor components in otherwise compliant domestic steel and iron products. Finally, a minor components waiver will provide consistency across agencies and domestic preference requirements, helping to keep product costs down for critical infrastructure projects.

Many of the resources and benefits delivered by these programs support projects in communities with limited technical and financial expertise to comply with complex domestic preference requirements. Furthermore, FEMA will need to allocate additional personnel to process project-specific waivers. A minor components waiver allowing miscellaneous iron and steel minor components of unknown origin up to five percent of the total material cost of an otherwise domestically produced iron and steel product allows the Agency to dedicate critical personnel to the compliance activities of higher value BABAA compliant items. Failure to provide recipients and manufacturers flexibilities with minor components purchases may limit the Agency's ability to successfully implement the BABAA requirements.

To date, FEMA has taken the actions below to implement the BABAA requirements:

1. Promulgated Agency-wide policy;
2. Developed Agency website on BABAA;
3. Ensured Notices of Funding Opportunity and awards were updated, as appropriate, with applicable terms and conditions;
4. Engaged in Tribal consultations;
5. Established process for waiver review and routing;
6. Developed outreach strategy plan to provide guidance and training to FEMA staff and

recipients, subrecipients, and stakeholders;

7. Developed contract provisions and self-certification for recipients and subrecipients to include in their contracts and subcontracts funded by FEMA federal financial assistance for infrastructure;
8. Issued a Six Month General Applicability-Adjustment Period Waiver to allow time for FEMA to develop policies and procedures to implement the BABAA requirements. This waiver was issued on July 1, 2022 and expired on January 1, 2023;
9. Issued a Six Month Adjustment Period for Tribes Waiver. This waiver was issued on February 6, 2023 and is in effect through August 6, 2023;
10. Issued a Small Projects General Applicability Waiver. This waiver was issued on February 21, 2023 and is in effect through February 20, 2028; and
11. Issued a De Minimis General Applicability Waiver (5% of material costs subject to BABAA, not to exceed \$1,000,000). This waiver was issued on March 14, 2023 and is in effect through March 13, 2028.

In addition to the actions above, a minor components waiver, focused on reducing administrative burden on recipients and subrecipients is also a key part of FEMA's implementation.

#### **IV. 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 in the cost of foreign-sourced products. FEMA will perform additional market research during the duration of the waiver and consult with International Trade Administration (ITA) to better understand the market to limit the use of waivers caused by dumping of foreign-sourced products.

## **V. Limited Duration of Waiver**

FEMA is committed to the successful implementation of the important Buy America preference across its programs providing covered federal financial assistance for infrastructure projects and will move swiftly towards completion of the processes outlined in this notice. This waiver is effective upon approval date, which is **July 23, 2023**, and will remain in effect for all awards or funding obligated to recipients and subrecipients of FEMA financial assistance infrastructure projects for five years from the approval date. As FEMA develops efficient waiver review capabilities, FEMA will review this waiver within five years of the date on which the waiver was issued or more often as necessary to determine its continued utility, applicability and relevance with FEMA's missions and goals consistent with the IJA, and the 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\*](#).

## **VI. Public Comments**

FEMA solicited public comments on the waiver as required under Section 70914 of BABAA. In particular, FEMA invited interested parties to comment on the length, purpose, and scope of the waiver to allow FEMA to make an informed final determination on this waiver. A total of eight comments were received in response to the proposed waiver. FEMA thoroughly reviewed

and considered each of the comments in determining to move forward with the issuance of this waiver as published in this Final Notice. The comments generally favored a Minor Components waiver as proposed.

A total of six commenters supported the Minor Components waiver as written. One commenter asked that FEMA's guidance outlining the application of the minor components waiver use the same standards and language as set forth by the US EPA for its minor (ferrous) components waiver. One commenter asked FEMA to consider a waiver for manual gear actuators.

One commenter expressed concern that its iron and steel fasteners would be classified as minor components and asked that fasteners be explicitly excluded from the classification of minor components. It opposes fasteners being waived or exempted from BABAA as a product class. One commenter opposes the Minor Components waiver as contrary to the IJA and Buy America/n policy, stated that FEMA provided no evidence that miscellaneous iron and steel components are difficult to acquire domestically, and stated that BABAA requires all steel used in federally funded infrastructure projects to be domestically produced. This commenter also cited the industry standard use of mill certs to track the origin of steel inputs and disputes that the origins of miscellaneous steel components may be unknown, and that determining their origin creates an administrative burden. In addition, it said that FHWA and the Federal Transit Administration have successfully administered Buy American requirements without minor components waivers in place. Lastly, this commenter asks that minor iron and steel products be expressly defined and opposes any potential waivers of steel fasteners as a minor component product class.

FEMA appreciates the feedback provided by the commenters and notes that the limitations as set forth in this Final Notice will remain, however FEMA will regularly review



and evaluate issued waivers to ensure that waivers align with BABAA intent and provide value to stakeholder program delivery.

At this time, after reviewing the submitted comments, FEMA is issuing this Minor Components waiver with no substantive changes described herein, with some minor clarification regarding the definition of minor components and with other minor, inconsequential grammatical revisions.

*Robert A. Farmer*

Robert A. Farmer  
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**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                      | 97.139                    | Safeguarding Tomorrow Through Ongoing Risk Mitigation Revolving Loan Fund (Safeguarding Tomorrow RLF) |

|     |     |        |   |
|-----|-----|--------|---|
| 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