

Build America, Buy America Act: Applying the General Applicability Waivers

This fact sheet provides key information to FEMA award recipients and subrecipients on the application of three of FEMA’s general applicability waivers of the Build America, Buy America Act domestic preference requirements. They include the small projects, de minimis, and minor components waivers. This fact sheet also provides the purpose, documentation requirements and effective dates for each waiver.

BABAA Overview and Waivers

The [Infrastructure Investment and Jobs Act \(IIJA\)](#), signed into law in November 2021, includes the Build America, Buy America Act (BABAA), which applies a new purchasing preference for American made products. In accordance with BABAA, FEMA must ensure that no federal financial assistance for “infrastructure” projects are awarded “unless all the iron, steel, manufactured products and construction materials used in the project are produced in the United States.” FEMA awards for infrastructure projects, under [certain FEMA financial assistance programs](#) issued on or after Jan. 2, 2023, must comply with the BABAA requirements unless FEMA approves a waiver.

Per section [70914\(b\) of BABAA](#), FEMA has the authority to waive the BABAA requirement when:

1. Applying the requirement is inconsistent with the public interest (a “public interest waiver”);
2. 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
3. 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”).

BABAA Waivers

The scope of a BABAA waiver can fall into one of two categories: general applicability waivers and project-specific waivers. General applicability waivers apply across multiple FEMA awards and projects. Project-specific waivers are used for a specified non-domestic product for a single project.

General Applicability Waivers

[OMB Memo M-24-02](#) defines the term “general applicability waiver” as a waiver that applies generally across multiple projects or 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”). Award recipients subject to BABAA may use general applicability waivers and do not require a separate application or approval by



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FEMA before use. These may cover categories of products known to be unavailable domestically or are intended to ease the burden of compliance.

A full list of FEMA approved general applicability waivers is available for review on the [FEMA BABAA website](#). However, the information below summarizes three of FEMA's general applicability waivers: the small projects, de minimis, and minor components waivers.

Small Projects Waiver

The [Small Projects General Applicability Waiver](#) waives the need for small projects to comply with the Buy America domestic content procurement preference ("Buy America preference") for otherwise covered infrastructure project purchases. This waiver applies to projects under FEMA financial assistance awards where the total project costs do not exceed the federal simplified acquisition threshold of \$250,000.

A FEMA financial assistance award may be composed of multiple projects with varying levels of cost. The waiver would be applicable for any project to which FEMA awards a financial award or subaward that is less than the federal simplified acquisition threshold.

If FEMA provides a financial assistance award, or subaward, composed of several projects, each project is eligible for the Small Projects General Applicability Waiver if these projects are sufficiently distinct from one another and if the total amount for each project is below the federal simplified acquisition threshold. In the event of unplanned cost overages and overruns all additional purchases are subject to and must comply with BABAA unless otherwise waived. Consult your FEMA grant representative for additional guidance.

WAIVER APPLICATION EXAMPLE

If FEMA issues an award, or subaward, with several projects, and the projects are completed at different locations and times, have distinct purposes, and the total amount for each project is \$250,000 or less, then each of the projects would qualify for this waiver.

DOCUMENTING COMPLIANCE

Award 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 and provided to FEMA grant representatives upon request.

EFFECTIVE DATE

The Small Projects General Applicability waiver is effective as of Feb. 21, 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, which is Feb. 20, 2028. FEMA will review this waiver within five years of the effective date or more often as appropriate to determine its continued utility, applicability and relevance with FEMA's missions and goals.

De Minimis Waiver

The [De Minimis General Applicability Waiver](#) waives the need to comply with the Buy America preference for otherwise covered infrastructure project purchases, totaling up to 5% of the total material costs subject to BABAA, up to a maximum of \$1 million.

Although every effort should be made to ensure all products permanently incorporated into a project are BABAA-compliant, there may be some products that are unable to be obtained in compliance with BABAA or products that have unknown origins. The de minimis waiver allows for inclusion of products with unknown or foreign origin for up to 5% of total materials costs subject to BABAA, not to exceed \$1 million. Once a recipient’s total purchases of materials otherwise covered by the Buy America preference reach 5% of applicable project costs, or the de minimis threshold of \$1 million, whichever is lower, all other applicable project purchases must comply with the Buy America preference.

WAIVER APPLICATION EXAMPLE

A project with \$21 million in total applicable project costs subject to Buy America preferences may apply the de minimis waiver to products totaling to a cost of \$1 million for which Buy America preferences would otherwise typically apply. Although 5% of total applicable project costs for this project would be \$1,050,000, the maximum allowable de minimis threshold of \$1 million applies, therefore limiting the de minimis allowance to less than 5%.

DOCUMENTING COMPLIANCE

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. Tracking the costs will ensure compliance with the conditions of the de minimis waiver.

Table 1 provides a sample cost tracking spreadsheet.

| De Minimis Waiver Cost Documentation | | | | |
|---|---------------|----------|--------------------|-------|
| Project Name or Award Recipient: | | | | Date: |
| Product | Cost per item | Quantity | Total Product Cost | |
| Product #1 | \$5.00 | 5 | \$25.00 | |
| Product #2 | \$20.00 | 10 | \$200.00 | |
| Product #3 | \$25.00 | 23 | \$575.00 | |
| Product #4 | \$100.00 | 30 | \$3,000.00 | |
| | | | \$ | |
| | | | \$ | |
| Total cost of De Minimis products: | | | \$3,800.00 | |
| Total Project Costs: | | | \$950,000.00 | |
| 5% De Minimis Allowance*: | | | \$47,500.00 | |
| De Minimis Allowance Used %: | | | 8.00% | |
| De Minimis Allowance Remaining: | | | \$43,700.00 | |

**De Minimis Allowance is 5% of total project costs subject to BABAA, or \$1,000,000, whichever is lower*

Table 1

EFFECTIVE DATE

This waiver is effective as of March 14, 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, which is March 13, 2028. FEMA will review this waiver within five years of the effective date or more often as necessary to determine its continued utility, applicability and relevance with FEMA's missions and goals.

Minor Components Waiver

The purpose of the [Minor Components General Applicability Waiver](#) is to reduce the administrative burden to iron and steel manufacturers who have reported significant compliance challenges for products that contain miscellaneous iron and steel minor components whose origin cannot be reliably tracked or determined but are otherwise domestically produced. The Minor Components General Applicability Waiver permits manufacturers to produce BABAA-compliant iron and steel products that contain minor iron or steel components of foreign or unknown origin. These iron or steel products can contain non-domestically produced miscellaneous iron and steel minor components comprising no more than 5% 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 Buy America preference requirement, and the primary iron and steel components of the product must be produced domestically.

WAIVER APPLICATION EXAMPLES

1. A supplier that offers an otherwise BABAA-compliant iron or steel product with non-domestic hardware such as stainless-steel nuts and bolts that comprise 5% or less of the total materials costs of the product could use the minor components waiver to certify their product as BABAA-compliant.
2. A fire hydrant supplier that offers an otherwise BABAA-compliant fire hydrant with non-BABAA compliant stainless steel and pins that make up 5% or less of the total materials costs of the product could use the minor components waiver to certify their product as BABAA-compliant.

DOCUMENTING COMPLIANCE

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 if the manufacturer is using the minor components waiver for the specified product. For additional information, including suggested elements for a manufacturer certification of compliance with BABAA, please see [BABAA Best Practices Guide](#).

EFFECTIVE DATE

This waiver is effective as of 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, which is July 22, 2028. FEMA will review this waiver within five years of the effective date or more often as necessary to determine its continued utility, applicability and relevance with FEMA's missions and goals.

Additional Information

Tools and Resources

For additional information on BABAA and FEMA requirements, you are encouraged to visit ["Buy America" Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov](#). You can also refer to the Office of Management and Budget's Made in America Office Website ([Home | Made in America](#)).