



September 24, 2025

**Proposed General Applicability Public Interest Waiver for Previously Planned and Completed Projects Under the State Border Security Reinforcement Fund
Federal Emergency Management Agency**

AGENCY: Federal Emergency Management Agency (FEMA)

ACTION: Notice

SUMMARY: The State Border Security Reinforcement Fund is a newly established program authorized and appropriated by Congress for the Department of Homeland Security to provide grants to eligible states and units of local government for border security-related expenditures for activities completed, ongoing, or initiated on or after January 20, 2021. In accordance with the Build America, Buy America Act (BABAA), FEMA is issuing this notice to propose a general applicability waiver to the Buy America Domestic Content Procurement Preference (commonly referred to as the “Buy America preference”) for federal financial assistance awarded under the State Border Security Reinforcement Fund. This proposed waiver would apply to awards and subawards for eligible infrastructure projects that, as of the date that the program Notice of Funding Opportunity was issued: have already completed planning/design, are under construction, or the construction is already complete.

LENGTH OF WAIVER: If approved, this waiver will remain in effect for three (3) years from the date of approval and will apply to FEMA awards made during that period for qualifying infrastructure projects for the duration of the project performance period.

SUPPLEMENTARY INFORMATION

I. Build America, Buy America Act

BABAA was enacted on November 15, 2021, and establishes a domestic content procurement preference for federal infrastructure programs. Section 70914(a) of BABAA requires FEMA to ensure that funds made available for infrastructure projects are obligated only if the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. Section 70912 further defines infrastructure broadly, encompassing construction, alteration, maintenance, and repair of buildings, real property, and other traditionally included items.

II. FEMA's Implementation of BABAA

Since BABAA's enactment, FEMA has taken significant steps to implement the Buy America preference, including:

- Established a FEMA-wide working group to develop and implement compliance policies and procedures.
- Conducted internal assessments that identified the FEMA federal financial assistance programs that were subject to BABAA.
- Issued a general applicability waiver that extended implementation of BABAA to January 2, 2023.
- Coordinated with the Department of Homeland Security to add the BABAA requirements to its Notices of Funding Opportunity and grant award terms and conditions.
- Developed policy and guidance resources for stakeholders.
- Established a FEMA website about its implementation of BABAA.

- Issued Grant Alerts via email to notify internal and external stakeholders of the new requirements.
- Delivered trainings to recipients, subrecipients, and other stakeholders regarding compliance with BABAA.

III. Waivers

Under section 70914(b), FEMA has authority to waive the application of the Buy America preference under the following circumstances:

1. Applying the preference would be inconsistent with the public interest;
2. Materials and products subject to the preference are not produced in the United States in sufficient and reasonably available quantities or satisfactory quality; or
3. Inclusion of domestically produced materials and products would increase the cost of the overall project by more than 25%.

Section 70914(c) requires FEMA to publish proposed waivers with a detailed written explanation and provide a public comment period of at least fifteen (15) days. Information on this waiver may be found at FEMA's Buy America Preference webpage:

<https://www.fema.gov/grants/policy-guidance/buy-america>.

IV. State Border Security Reinforcement Fund

Section 90005(b) of the One Big Beautiful Bill Act, 2025, (Pub. L. No. 119-21), enacted on July 4, 2025, established the State Border Security Reinforcement Fund and provided \$10 billion for the Secretary of Homeland Security to make grants to eligible states and local governments for border security-related activities. The Secretary may provide grants from this fund for expenditures for completed, ongoing, and new activities that occurred on or after January 20, 2021. Allowable activities include infrastructure projects such as construction or

installation of border walls, fencing, barriers, or buoys along the southern border of the United States, as well as planning, procurement of materials, and personnel costs related to such construction. Additionally, Section 90005(b)(5) of the act requires the Secretary to begin to accept applications to this program by October 2, 2025.

V. Waiver Justification for Ongoing and Completed Fund Activities

Applicants for infrastructure projects that have already completed planning/design, are under construction, or where construction is already complete, did not have prior knowledge of the fund's availability when they planned, designed, and began or completed constructing their projects. As a result, they were unable to incorporate the domestic preference requirements. Without this waiver, applicants that have already completed planning/design and are under construction would face significant delays and increased costs due to the need to stop and potentially demolish construction, reevaluate and redesign project elements, investigate domestic product availability, revise engineering drawings and bid specifications, and resubmit plans for approval. These additional steps would severely disrupt construction timelines and budgets, jeopardizing the timely completion of critical border security infrastructure projects. This waiver is essential to prevent such disruptions, ensuring the effective use of federal funds and safeguarding national security interests.

VI. Qualifying Projects

This proposed waiver would apply to awards and subawards for qualifying infrastructure projects that, as of the date that the program Notice of Funding Opportunity was issued: have already completed planning/design, are under construction, or construction is already complete. FEMA proposes to apply the waiver to qualifying projects receiving funds from Federal awards made on or after the effective date of the final waiver.

VII. Limited Duration of Waiver

This waiver, if approved, will remain in effect for three (3) years from the approval date and will apply to FEMA awards made during that period for qualifying infrastructure projects for the duration of the project performance period.

VIII. Assessment of Cost Advantage of a Foreign-source Product

Under OMB M–24–02, 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’s analysis concluded that this assessment does not apply, as the waiver is not based on the cost of foreign-sourced products.

IX. Solicitation of Comments

The proposed waiver will be posted on [FEMA’s public-facing webpage](#) on September 24, 2025, and on the Made in America website on September 24, 2025, to satisfy the requirement to publish any Build America, Buy America Act waiver and provide the public with fifteen (15) days to submit comments. FEMA invites comments from the public, industry stakeholders, and other interested parties. For more information, please visit [FEMA’s Buy America Preference webpage](#) or [MadeinAmerica.gov](#).