



KENTUCKY INFRASTRUCTURE
AUTHORITY

IMPLEMENTING
BUILD AMERICA,
BUY AMERICA
DOMESTIC PREFERENCE REQUIREMENTS

AN SRF GUIDE FOR BORROWERS

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1. INTRODUCTION

THE BUILD AMERICA, BUY AMERICA ACT

The [Bipartisan Infrastructure Law \(BIL\)](#) (Public Law No. 117-58), also known as the Infrastructure Investment and Jobs Act, was signed into law on November 15, 2021. This legislation includes the Build America, Buy America (BABA) Act, §§ 70901-27. BABA requires all agencies, including the Kentucky Infrastructure Authority (KIA) and its Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) programs, to ensure by May 14, 2022, that no federal financial assistance is provided for any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States *“unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”*

On August 23, 2023, the Office of Management and Budget (OMB) issued a Notification of Final Guidance revising title 2 of the Code of Regulations (“CFR”) to add a new [part 184](#) and revise [section 200.322](#). Part 184 provides guidance to Federal agencies on how to apply the “Buy America” preference set forth in BABA to Federal awards for infrastructure projects. The revised section 200.322 clarifies existing provisions within part 200 on domestic preferences for procurements made under Federal financial assistance awards and specifies that Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

On October 25, 2023, the Office of Management and Budget (OMB) issued [Memorandum M-24-02](#), which rescinds and replaces Memorandum M-22-11, to provide supplemental implementation guidance for agencies on the application of a Buy America preference to Federal financial assistance programs for infrastructure and the process for waiving such a Buy America preference – including the circumstances under which waivers may be justified as consistent with applicable law and policy. To the extent that any guidance provided in this memorandum conflicts with guidance in 2 CFR part 184, the guidance in part 184 prevails.

On November 3, 2022, EPA released the “Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs.” The memorandum provides important information to support EPA’s grantees, contractors, and manufacturers in complying with Build America, Buy America. These procedures were supplemented in May, 2023. Links to the original procedures and the supplement are here: [Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs \(November 2022\) \(pdf\)](#) ; [Supplemental Questions and Answers for Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs \(May 2023\) \(pdf\)](#).

In accordance with the memo, KIA must ensure that all of its SRF loans comply with [section 70914](#) of BABA. There are three key requirements that borrowers, contractors, and subcontractors are required to follow for an infrastructure project.

1. **Domestic Preferences**
2. **Contract Language**
3. **Waivers**

2. DOMESTIC PREFERENCES

WHAT ITEMS ARE COVERED BY A DOMESTIC, OR “BUY AMERICA”, PREFERENCE?

Borrowers, contractors, and subcontractors must ensure that all articles, materials, or supplies used in their SRF project are produced in the United States. An article, material, or supply should only be classified into one of the following categories: Iron and steel products; Manufactured products; Construction materials; or Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

IRON AND STEEL

- Articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both. “Wholly or predominantly” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.
- All manufacturing processes, from the initial melting stage through the application of coatings, must occur in the United States.

MANUFACTURED PRODUCTS

- The manufactured product was manufactured 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 percent 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.

In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

- a. 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
- b. For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

CONSTRUCTION MATERIALS

- All manufacturing processes for the construction material occurred in the United States. Construction materials means articles, materials, or supplies incorporated into an infrastructure project that consists of only one or more of the following materials. 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.
 - Non-ferrous metals – All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
 - 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.
 - Glass – All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
 - 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, but not for non-ferrous metals, plastics and polymer-based products, or any others.
 - Optical fiber – All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
 - Lumber – All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.
 - 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.
 - 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.

SECTION 70917(C) MATERIALS

- These materials are exempt from a Buy America preference and therefore do not have to be produced in the United States.
 - Cement and cementitious materials.
 - Aggregates such as stone, sand, or gravel.
 - Aggregate binding agents or additives.

WHEN DOES “BUY AMERICA” PREFERENCE APPLY?

A Buy America preference only applies to the iron and steel, manufactured products, and construction materials **used for a federally funded SRF project**.

A Buy America preference only applies to articles, materials, and supplies that are **consumed in, incorporated into, or affixed to an infrastructure project**. 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.

It also does not apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used or within the finished infrastructure project **but are not part of or permanently affixed to the structure**.

EXEMPTIONS TO THE “BUY AMERICA” PREFERENCE?

The Buy America preference does not apply to expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.

“Pre and post disaster or emergency response expenditures” consist of expenditures for financial assistance that are:

- (1) Authorized by statutes other than the Stafford Act, 42 U.S.C. 5121 *et seq.*; and
- (2) Made in anticipation of or response to an event or events that qualify as an “emergency” or “major disaster” within the meaning of the Stafford Act, 42 U.S.C. 5122(1), (2).

3. CONTRACT LANGUAGE AND CERTIFICATIONS

All contractor and subcontractor contracts for projects using federally funded SRF loans must include a contract provision explaining the BABA requirements and a self-certification where contractors can certify compliance with Buy America preference requirements outlined in Section 2 of this handbook.

REQUIRED CONTRACT LANGUAGE

Any contracts for projects funded by a federally funded SRF loan, including subcontracts, shall include the following terms:

Buy America Domestic Procurement Preference:

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of a federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Borrowers of a loan of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

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 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
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 Buy America preference only applies 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 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 the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit <https://www.epa.gov/cwsrf/build-america-buy-america-baba>. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

Waivers

When necessary, borrowers may apply for, and the EPA may grant, a waiver from these requirements, subject to review by the Made in America Office. The EPA may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the 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;
2. Unreasonable Cost Waiver: 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 twenty five percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where a loan qualifies, in whole or in part, for an existing EPA general applicability waiver as described at <https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers>. If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the borrower is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a borrower believes that one of the above circumstances applies to a loan, a request to waive the application of the domestic content procurement preference may be submitted to KIA in writing. Waiver requests shall be initiated by completing form KIA -001 and sending the form to Natalie Lile at Natalie.lile@ky.gov. Questions pertaining to waivers should be directed to Natalie.lile@ky.gov.

Definitions

“Construction materials” includes an article, material, or supply that consists of only one of these items:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Fiber optic cable (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; and
- Drywall.

“Construction Materials” does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means 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.

“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.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Contractors and subcontractors must submit the “KIA-003 – Contractor Certificate of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts” form, to the borrower. 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. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABA domestic preference requirement. Such disclosures shall be forwarded by the borrower to KIA.

REQUIRED SELF-CERTIFICATIONS

For KIA federally funded SRF loans subject to BABA, borrowers must sign and submit their own certification form, “KIA-002 – Borrower Report of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts”, Figure 1. This form, which can be found on KIA’s [website](#), shall be submitted with each payment request to KIA.

In addition, contractors and subcontractors must sign and submit the “KIA-003 – Contractor Certificate of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts” form, Figure 2. This form, which can also be found on KIA’s [website](#), shall be submitted with each payment request to KIA.



BORROWER REPORT OF COMPLIANCE WITH BUILD AMERICA, BUY AMERICA PROVISIONS FOR FEDERALLY ASSISTED CONTRACTS

This form is to be submitted with each request for reimbursement of funding by the Borrower and as requested by the Kentucky Infrastructure Authority (KIA) during the project.

BORROWER NAME			
LOAN NUMBER			
PROJECT DESCRIPTION			
BILLING PERIOD		TO	

Borrower Statement:

I confirm to the best of my knowledge and belief that we are in compliance with the requirements of Pub. L. No. 117-58, §§ 70901-27 as referenced in the following requirements of the Build America, Buy America (BABA) Act.

Signature (Borrower Representative)

Title

Date

The Build America, Buy America Act, enacted under Division G, Title IX of the Infrastructure Investment and Jobs Act (IIJA), applies a domestic content procurement preference requirement (Buy America Requirement) to federally funded public "infrastructure projects". Per Section 70914 of the IIJA funds may not be obligated for an "infrastructure project" unless all of the iron and steel, manufactured products, and construction materials used in the project was produced in the United States or an applicable a waiver to the domestic content procurement preference requirement is used.

Borrower Responsibility

The Borrower is responsible for ensuring the BABA Requirement flows down to all contracts, subcontracts, and purchase orders for work performed under the proposed infrastructure project. Borrowers of loans subject to the BABA Requirement must ensure that, absent a waiver, none of the funds provided under their loan may be used for a project for infrastructure unless:

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 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
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 first page of the KIA-002 form contains information related to the project and invoice period and signature area.

Language for certifying compliance.

The BABA Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a BABA Requirement apply to equipment and furnishings that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Compliance Verification

BABA requirements must flow down to all contracts, subcontracts and purchase orders for work performed under the infrastructure project; therefore, Borrowers must provide to KIA, along with this Report, certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States.

The Certificate of Compliance form must be provided by contractors and subcontractors from the suppliers or manufacturers of the iron and steel, manufactured products, and construction materials and flow up from all contractors and subcontractors to the Borrower.

Borrowers must keep these certifications with the loan/project files, provide copies to KIA with all draw requests and be able to produce upon request from the EPA, KIA, auditors or Office of Inspector General. Copies of the Certificate of Compliance form may be requested from KIA.

The second page contains more compliance certification language.

Prime contractors and subcontractors should complete and sign a copy of this form and submit with each payment request. Contractors must also attach receipts and/or other documentation with this form showing evidence of BABA compliance. Borrowers should collect and submit these forms with all draw requests.

CONTRACTOR NAME			
CONTRACTOR ADDRESS			
PROJECT NAME			
INVOICE PERIOD		TO	
LOAN NUMBER			
CONTRACT AMOUNT			

This certification is to be utilized by prime contractors and subcontractors who have been awarded contracts funded through KIA Federal Revolving Loan Funds and subject to the BABA provisions of the Infrastructure Investment and Jobs Act (Pub. L. No 117-27). Buy America provisions state:

- (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 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
- (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.

MATERIALS/MANUFACTURED GOOD(S) BEING USED FOR PROJECT (Please List):

(Use additional page(s) if necessary)

TYPE OF GOOD	MAKE & MODEL	MANUFACTURING LOCATION

The first page of the KIA-003 form contains information related to the project and invoice period.

It also requires a listing of materials/ manufactured goods that were used for the invoicing period.

CERTIFICATE OF COMPLIANCE WITH BABA

I hereby certify that all of the iron and steel, manufactured products, and construction materials supplied or provided by our company for use on this project were manufactured in the United State of America, unless an applicable waiver applies.

or

I am relying on the following BABA waiver(s) (check all that apply):

- De Minimis Waiver**
Iron and steel, manufactured products, and construction materials supplied/provided by our company equal no more than 5 percent of the total applicable project costs of the iron and steel, manufactured products, and construction materials used in and incorporated into this project.
- Small Grants Waiver**
The total loan amount does not exceed \$250,000.00 and is not anticipated to exceed this threshold for the life of the loan.
- Nonavailability Waiver**
One or more iron or steel items, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.
- Unreasonable Cost Waiver**
The inclusion of one or more iron or steel items, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.
- Adjustment Period Waiver**
The project design planning was initiated prior to May 14, 2022, and the loan was obligated out of one or both of the 2022 or 2023 cap grants.

Representative Name _____	Title _____
Representative Signature _____	Date _____

The second page of the KIA-003 form contains language for certifying compliance and signature area.

Figure 2

MANUFACTURER CERTIFICATIONS

As an additional step to ensure compliance when purchasing products for the project, borrowers should request a certification letter from each product manufacturer to demonstrate compliance with BABA requirements. Certification letters must contain five essential elements, which include:

- A reference to the project;
- Specific product information;
- Compliance with BABA reference;
- Location of manufacturer; and
- A company representative signature.

The certification letter should be maintained as part of the project record and should be provided to KIA along with draw requests that contain reimbursement requests for those specific certified BABA items. Below are examples of two types of manufacturer certifications: Step Certification and Final Certification.

Step Certification

A step certification is a type of certification process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the subject products and materials certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of subject products and materials. Figure 3 gives an example of language to include in a step certification letter.

SAMPLE STEP CERTIFICATION LETTER:

Company letterhead

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Step Certification for Project (XXXXXXXXXX)

I, **(company representative)**, certify the **(melting, bending, coating, galvanizing, cutting, etc.)** process for **(manufacturing or fabricating)** the following products and/or materials shipped or provided for the subject project is in full compliance with the Build America, Buy America (BABA) Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-27.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location: _____.

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Signed by company representative

Figure 3

Final Certification

Although obtaining step certification is the best practice, if not possible, borrowers may consider requesting a final manufacturer certification letter. For a final certification letter, the final manufacturer that delivers the product to the worksite, vendor, or contractor provides a certification asserting that all manufacturing processes occurred in the United States. While this type of certification may be acceptable, it may not provide the same degree of assurance, and therefore additional documentation may be needed if the certification is lacking important information. Sample final certification language is included below. Figure 4 gives an example of language to include in a step certification letter.

SAMPLE FINAL CERTIFICATION LETTER:

Company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project (XXXXXXXXXX)

I, (**company representative**), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the Build America, Buy America (BABA) Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-27.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location: _____.

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Signed by company representative

Figure 4

4. WAIVERS

Pursuant to section 70914(b) of BABA and 2 CRF 184.7, the EPA has the authority to waive the Buy America Preference 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”). If a project cannot comply with the Buy America Preference requirements, borrowers must seek a waiver from EPA. There are two categories of waivers: General Applicability Waivers and Project Specific Waivers.

GENERAL APPLICABILITY WAIVERS

The term “general applicability waiver” refers to a waiver that applies generally across multiple Federal agencies 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 borrowers subject to Buy America Preference may use general applicability waivers and do not require a separate application or approval by EPA prior to use. These may cover categories of products known to be unavailable domestically or are intended to ease the burden of compliance.

To date, EPA has approved three Agency-Wide General Applicability Waivers of importance:

1. **De Minimis Purchases Waiver** – This waiver is critical to ensure that infrastructure project purchases below a de minimis threshold funded through financial assistance agreements sustain progress while reducing the burden on borrowers.

This waiver covers SRF project purchases, totaling up to five percent of the total project costs. Applicable project costs are defined as material costs subject to the Buy America preference. Link to full text of waiver: [EPA De Minimis General Applicability Waiver of Section 70914 of P.L. 117-58, Build America, Buy America Act \(pdf\)](#)

2. **Small Award Waiver** – This waiver is critical to ensure that small SRF projects conducted through small SRF loans sustain progress and reduce the burden on borrowers, many of whom are small organizations operating in rural or disadvantaged communities.

This waiver permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified period of time for small grants that meet the following standard: a) The total loan amount does not exceed \$250,000.00; and b) the loan amount is not anticipated to exceed \$250,000.00 for the life of the loan. Link to full text of waiver: [EPA Small Project General Applicability Waiver of Section 70914\(a\) of P.L. 117-58, Build America, Buy America Act \(pdf\)](#)

3. **Minor Components for Iron and Steel Waiver** – Up to five percent of the total material cost of a product may include non-domestically produced miscellaneous minor iron or steel components without further need for a product-specific waiver. Full text of waiver: [Minor \(Ferrous\) Components of Iron and Steel Products Public Interest, General Applicability Waiver of Section 70914\(a\) of P.L. 117-58, Build America, Buy America Act, 2021 for U.S. Environmental Protection Agency Financial Assistance Awards \(pdf\)](#)

EPA has also approved one Program General Applicability Waiver of importance:

4. **Amended Design Planning Waiver** – This waiver is for projects that initiated design planning prior to May 14, 2022. Projects may qualify for his waiver if the borrower can provide documentation showing that any of the following activities occurred prior to May 14, 2022:
 1. Submitted PER or equivalent (to state or to recipient);
 2. Issued RFP or executed contract for design or engineering services;
 3. Executed SRF assistance agreement that includes design;
 4. For projects designed by recipient: documented initiating design (such as PER);
 5. Solicitation of construction contract bids;
 6. Submitted plans and specifications to state (do not need to be complete);
 7. Held public referendum or public meeting on proposed project; or
 8. Evidence of new bonds passed or other new funding backing secured.

Full text of waiver: [Amended Public Interest Waiver of Section 70914\(a\) of P.L. 117-58, Build America, Buy America Act, 2021 for State Revolving Fund and Water Infrastructure Projects that Initiated Design Planning prior to May 14, 2022 \(pdf\)](#)

EPA will consider the following waivers on a case-by-case basis (Project / Product-Specific Waivers):

5. **Nonavailability Waiver** – A Buy America Preference may be waived if one or more iron or steel items, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.
6. **Unreasonable Cost Waiver** – A Buy America Preference may be waived if the inclusion of one or more iron or steel items, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than twenty five percent. As part of the cost waiver request, the borrower must demonstrate that implementation of the BABA requirements will increase the overall project cost more than twenty five percent. Documentation to justify the cost waiver can vary but may include itemized cost estimates or bid tabulations comparing project costs with and without BABA implementation. Borrowers should begin assessing the potential cost impacts of the BABA requirements during the design phase of a project.
7. **Public Interest Waiver** – A Buy America Preference may be waived if applying the domestic content procurement preference for one or more iron or steel items, manufactured products, or construction materials would be inconsistent with the public interest. The EPA does not anticipate granting many, if any, Public Interest waivers.

WAIVER SUBMISSION

A borrower wishing to use any of the above-listed waivers must complete and submit Form KIA-001 – “Borrower Request for Waiver of Build America, Buy America Provisions for Federally Assisted Contracts.” KIA may approve any General Applicability waivers. If necessary, KIA will work with a borrower to prepare a waiver application for KIA to submit to EPA for approval of a Project / Product-Specific Waiver.

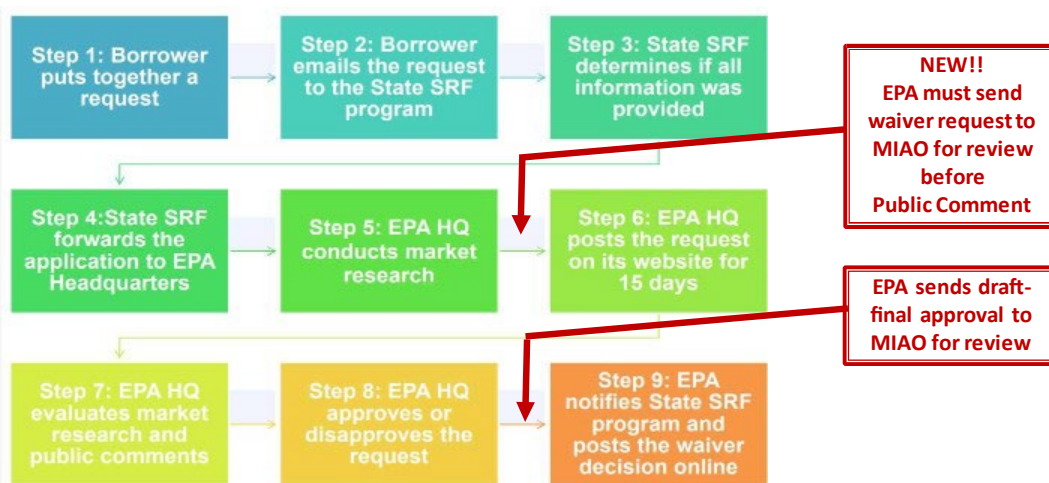
The purpose of the information gathered by KIA and the borrower and provided to EPA is to demonstrate the borrower’s due diligence, and provide the EPA and MIAO with sufficient information to determine whether the proposed waiver is consistent with law and policy. Information provided for public review should help interested manufacturers gauge the demand for products for which agencies are considering waiving a Buy America preference.

WAIVER APPROVAL

If EPA determines that a borrower’s waiver request (in whole or in part) appears to meet the legal and policy criteria of Buy America, and in accordance with Section 70914 (c), the EPA will post its proposed waiver justification for public comment for a period of not less than 15 days to the EPA’s BABA waiver page. On a case-by-case basis when circumstances warrant, for example when a waiver covers items of special importance to American supply chains (such as those identified in section 3(b) of the Executive Order 13953) or involves a substantial amount of Federal funding, waivers may be subject to a minimum 30-day public comment period.

Before finalizing a waiver, EPA must submit the waiver determination to the OMB MIAO for final review pursuant to Executive Order 14005 and sections 70923(b)(2) and 70937 of the Infrastructure Investment and Jobs Act. After final review, the waivers are subject to a minimum 30-day public comment period. EPA will post approved waivers on the EPA’s approved waivers web page, and KIA will notify you if your waiver request was approved. See below for a graphic showing the EPA’s approval process for product / project-specific waivers.

Waiver Process



5. COMPLIANCE OVERSIGHT

BORROWER COMPLIANCE RESPONSIBILITIES

Borrowers bear much of the responsibility for ensuring compliance with BABA. Furthermore, borrowers have a vested interest in ensuring that BABA compliance is met. If the contractor is not following BABA, this may mean that the borrower's valuable funds are being used improperly.

The following tasks make up the borrower's BABA compliance oversight role and may be performed by the borrower or by a designated representative such as a consultant:

- Include BABA language in construction contract(s)
- Verify required BABA certificate of compliance form
- Check manufacturer certifications, if applicable
- Process waivers, if applicable

INCLUDING BABA LANGUAGE

Borrowers are responsible for including the BABA provisions language into all construction contracts, as well as language that requires contractors to include BABA provisions in subcontracts.

VERIFYING CERTIFICATIONS

When a contractor/subcontractor submits a request for payment, they are required to self-certify that all materials or manufactured goods for the billing period complies with BABA. Borrowers are responsible for reviewing the KIA-003 Contractor Certificate for Accuracy.

Borrowers are responsible for ensuring the first page of the form is completely filled out and all materials or manufactured goods being requested for reimbursement are listed on the form. The second page must have at least one of the check boxes marked and signed by the contractor/subcontractor authorized representative.

In addition to the KIA-003 form, borrowers must themselves self-certify that all material or manufactured goods for the billing period complies with BABA. Borrowers are responsible for completing the KIA-002 Self-Certification Report. Borrowers should ensure the first page of the form is completely filled out and signed by an authorized representative.

CHECKING MANUFACTURER CERTIFICATIONS

Borrowers are responsible for obtaining a manufacturer certification letter from the contractor/subcontractor.

Borrowers are responsible for ensuring that the language similar to the examples in Figure 3 and Figure 4 is contained in the certification; but at a minimum, the form must contain a reference to the law, a list of materials/items, the city and state where the materials/items were manufactured, and a signature from the manufacturer's representative.

PROCESSING WAIVERS

A borrower may wish to submit a waiver request for certain materials or manufactured goods. If applicable, the borrower is responsible for developing the waiver request with assistance from KIA. Once in final form, KIA will file the waiver with EPA.

6. DOCUMENTS AND FORMS TO BE SUBMITTED TO KIA

- **REQUEST FOR PAYMENT**

Draw Requests shall be submitted to KIA.srfloans@ky.gov. Below are supplemental documents, for BABA compliance, that are to accompany draw requests.

- **BORROWER REPORT OF COMPLIANCE**

Submit the “KIA-002 – Borrower Report of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts” form to certify Buy America compliance.

- **CONTRACTOR/SUBCONTRACTOR CERTIFICATE OF COMPLIANCE**

Submit the “KIA-003 – Contractor Certificate of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts” form to certify Buy America compliance.

- **MANUFACTURER CERTIFICATION**

Submit the step and final certifications to certify Buy America compliance.

- **WAIVERS**

If applicable, submit waiver requests to KIA.

You may find it useful to use the Build America, Buy America Act Compliance Checklist for Borrowers, which can be found on the KIA [website](#), as a tool to insure proper and timely document submission.

7. SUMMARY

If you have never administered a project with BABA requirements, it can be overwhelming at first. This handbook was developed to familiarize and assist you with these requirements.

It is recommended you read this handbook several times and study the figures and the forms on the KIA website. Everything you need to succeed is in this handbook and on the KIA [website](#).

However, even the greatest of guidance document will not make you an expert on the subject; that takes practice and repetition. That is why you should feel free to reach out to us if you have any questions, concerns, or need further clarification.

- For BABA specific questions, you may contact Natalie Lile at Natalie.lile@ky.gov or by calling (502) 892-3709.
- For questions related to the project itself, you may contact either John Brady at john.brady@ky.gov or by calling 502-892-3177; or Sandy Sanders at sandra.sanders@ky.gov or by calling 502-892-3743.

