

Department of Energy
Build America, Buy America Act
Final Project-Specific Non-availability Waiver for Air Source Heat Pumps
BABA WAV 2026-14

Proposed Waiver Summary: The United States Department of Energy (DOE) Office of State and Community Energy Programs (SCEP) is proposing a project nonavailability waiver of the manufactured products domestic preference requirements of section 70914 of the Build America, Buy America Act (BABA) included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) as applied to one federal financial assistance award for the City of Toledo, OH. This proposed limited nonavailability waiver would allow Toledo to purchase non-compliant Air Source Heat Pumps.

Duration of the waiver: Project Specific for the entire period of performance of the grant in which the infrastructure projects will occur.

Applicability: The waiver will apply to eligible expenditures incurred by the recipient on or after the effective date of the final waiver for the period that the waiver is active.

Recipient: City of Toledo (UEI#: N669DP1XJCH6)

Waiver Justification Type: Non-Availability waiver of the BABA manufactured product requirements for the products listed below.

Waiver Level: Project-specific waiver for one award.

Funding Mechanics: Funding for the infrastructure project is made available through the Energy Efficiency and Conservation Block Grant Program (DE-FOA-0002882) as part of the Bipartisan Infrastructure Law (BIL). The location of the project is Toledo, Ohio. The period of performance of this award (EECEQ-01437) is 1/8/2025-1/8/2027.

Description of Covered Items: This waiver proposes to waive:

Installation of HVAC system with integrated Building Automation Controls including, Split-System Heat Pumps, Variable Refrigerant Flow (VRF) Heat Recovery Condensing Units, associated ducted and cassette type Fan Coils, and standalone VRF manufacturer building automation system master controllers that enable scheduling, alarming, and monitoring of the VRF system to reduce energy and cost expenditures. The recipient's market research was unable to identify manufacturers that could meet the requirement of 55% component cost for the listed manufactured products needed for the project's completion.

Justification: Market research was conducted in June-August 2025 by Vision Design Group LLC, a licensed Professional Engineer with the State of Ohio, on the top Variable Refrigerant

Flow HVAC systems through online research of the top following VRF manufacturer's including Trane, Lennox, Carrier, JCI, Daikin, LG, Fujitsu, Panasonic, and Midea, all of whom of which are all manufactured overseas. Vision conducted additional direct outreach to local representatives of Trane, who informed Vision that Trane VRF is made by Mitsubishi and that there are no VRF/minisplits manufactured in America, and Lennox, which confirmed that Lennox are manufactured by Samsung and was additionally unaware of a VRF manufacturer within the United States that satisfied BABA requirements. The Engineer's market research was unable to identify any manufacturers that could meet the 55% domestic cost of components requirement for the specified manufactured products or construction materials needed for project completion. Although some products were manufactured in the United States, they did not satisfy the 55% cost threshold. Despite extensive outreach, no domestic manufacturer was able to supply all the materials necessary to comply with the Build America, Buy America (BABA) requirements. The City reviewed approved market research and BABA Nonavailability Waivers and Extensions granted for VRF products issued within the past year and verified that the previous analysis still stands, including Waivers 2025-03 and 2025-02.

Impact Absent the waiver: Absent this waiver, the project would not be able to be completed given that HVAC is the primary upgrade. Without the grant funds for replacement and ongoing budget constraints these units would likely experience consistent failures of the heating, cooling and ventilation systems over the next several years leading to costly shutdowns for the City of Toledo and community members.

Assessment of Cost Advantage of a Foreign-Sourced 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 nonavailability waiver. DOE's analysis has concluded that this assessment is not applicable to this waiver as this waiver is not based on the cost of foreign-sourced products.

Comment Analysis: This waiver was posted for public comment from 5/15/26 to 6/1/26. No comments were received in response to this proposed waiver. Accordingly, DOE will implement this waiver without any changes from its draft version.