



FINANCIAL ASSISTANCE LETTER

This Financial Assistance Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA. It is intended for use by the procurement professionals of DOE, primarily Contracting and Grants Officers, and other officials of DOE that participate in the acquisition process. Other parties are welcome to its information, but definitive interpretation of its effect on DOE solicitations, Notice of Funding Opportunity Announcements, Awards, and other related procedures and actions may only be made by DOE Contracting and Grants Officers.

Subject: The Buy America Preference for Financial Assistance -The Required Use of Iron, Steel, Manufactured Products, and Construction Materials Produced in the United States in Federally Funded Awards that Contain Construction, Alteration, Maintenance, or Repair of Public Infrastructure in the United States.

References:

Infrastructure Investment and Jobs Act, Division G, Title IX, Pub. L. No. 117-58.

2 CFR 184 – Buy America Preferences For Infrastructure Projects.

Office of Management and Budget, Memorandum M-24-02, dated Oct. 25, 2023.

Executive Order 14017, America's Supply Chains, dated February 24, 2021

Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers dated January 25, 2021.

When is this Financial Assistance Letter (FAL) effective?

The guidance provided in this FAL is effective as of date issued. The templates provided alongside of this FAL should be used prospectively; this FAL does not require the modification of existing NOFOs and term sheets.

When does this FAL expire?

This FAL supersedes FAL 2025-01 and remains in effect until canceled or superseded.

Who is the point of contact?

For DOE, questions concerning the Buy America Preference should be sent to the Contract and Financial Assistance Policy Division, Office of Policy in the Office of Acquisition Management at DOE_oapmpolicy@hq.doe.gov.

For NNSA, contact NNSA at (505) 845-5639.

Who is the intended audience?

Department of Energy (DOE) and National Nuclear Security Administration (NNSA) Contracting and Grants Officers. Any reference in this guidance to Contracting Officer (CO) should be understood to include Grants Officer (GO). Any reference in this guidance to the DOE should be understood to include the NNSA, unless otherwise indicated.

What is the purpose?

The purpose of this FAL is to provide information and guidance regarding the Department of Energy's (DOE or Department) implementation of the Domestic Content Procurement Preference Requirement (Buy America Preference) (also called the "Domestic Content Procurement Preference) established in the Build America, Buy America Act (BABA), Title IX of Division G of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 and codified in OMB's primary guidance provided to Agencies in 2 CFR 184, with further guidance provided to Agencies in OMB's Memorandum M-24-02.

What types of actions are affected by this FAL/OTL?

This FAL applies to all DOE notice of funding opportunities (NOFOs), funding opportunity announcements (FOAs) or other solicitations (such as annual program notices, broad agency announcements (BAAs) or administrative and legal requirements documents (ALRDs)) and the resulting federally funded awards (grants and cooperative agreements) or other federal financial assistance actions, whether or not funded through the Infrastructure Investment and Jobs Act (IIJA), where funds are appropriated or otherwise made available and used for financial assistance awards or actions for or that include public infrastructure projects—NOFOs, FOAs, BAAs, other solicitations and federally funded awards or actions that include construction, alteration, maintenance, or repair of public infrastructure in the United States. This FAL also includes guidance on DOE's Buy America Preference project-specific waiver request submittal and review process.

What is the background?

The Build America, Buy America Act (BABA), enacted under Division G, Title IX of the IIJA, applies a domestic content procurement preference requirement (Buy America Preference) for the iron, steel, manufactured products, and construction materials purchased by recipients or subrecipients under federally funded awards that contain construction, alteration, maintenance, or repair of public infrastructure in the United States, when those items are consumed in, incorporated into, or permanently affixed to the infrastructure. The goal of the Buy America Preference is to increase the resiliency of our domestic supply chain and manufacturing supply for critical materials both for emerging and existing industries in the United States consistent with Executive Order 14017. The IIJA supports the Administration's priority to use terms and conditions of federal financial assistance awards to maximize use of domestically produced goods, products, and materials consistent with Executive Order 14005. OMB's primary guidance to Agencies related to implementation of BABA is codified in 2 CFR part 184.

Further guidance to Agencies has been issued by OMB in Memorandum M-24-02. Memo M-24-02 summarizes certain aspects of 2 CFR part 184 and provides supplemental guidance for public infrastructure projects subject to BABA.

What guidance is included in this FAL/OTL?

GOs must ensure that the **Buy America Preference for Infrastructure Projects** provision (See Attachment 1) and award term (see Attachment 2) is included in all DOE notice of funding opportunities (NOFOs), funding opportunity announcements (FOAs) or other solicitations (such as annual program notices, broad agency announcements (BAAs) or administrative and legal requirements documents (ALRDs)). In addition, the standard BABA award term (see Attachment 2) must be inserted in the resulting DOE funded awards (grants and cooperative agreements) or other federal financial assistance actions, whether or not funded through the Infrastructure Investment and Jobs Act (IIJA). Note that BABA only applies where funds are appropriated or otherwise made available and used for financial assistance awards or actions that include public infrastructure projects that include, or may include, the construction, alteration, maintenance, or repair of public infrastructure in the United States. Awards which do not include such work as part of the project are not required to apply BABA, so DOE staff are encouraged to evaluate applicability to projects within their respective portfolios and consult with cognizant program legal counsel as needed.

GOs are also responsible for coordinating with the Program Office, Recipient, Program Legal Counsel, and the cognizant Head of Contracting Activity (HCA) to review, concur, submit and adjudicate a recipient project-specific waiver request as outlined in Section III part C of this FAL.

GOs must ensure new awards include a special award term identifying the specifics of the Buy America Preference waiver if the waiver is approved prior to award. GOs must amend existing awards to incorporate a project-specific waiver granted after the award is made.

Despite the use of the word “Preference,” this is very much a mandatory statutory compliance requirement. Both the Statute as well as the implementing regulations and OMB guidance characterize this requirement as the “Buy America Preference,” and so that terminology is reflected here to ensure consistency with the statute and existing guidance; BABA must be implemented and complied with in any award to which it is applicable.

I. Implementation and Application of the Build America, Buy America Act

a. Terms

There are several terms of art that are given specific definitions with respect to the application and execution of BABA. [Full definitions of these terms can be found by following this hyperlink to the relevant section \(2 CFR 184.3\) of the Code of Federal Regulations.](#) Any additional context not present in the Code of Federal Regulations definition for a given term is provided below.

- a. *Buy America Preference* (Sometimes also referred to as the **Buy America Requirement** or **Domestic Content Procurement Preference**)
- b. *Component*
- c. *Construction Materials*
- d. *Infrastructure Project*
- e. *Iron or steel products*
- f. *Manufactured Products*
- g. *Manufacturer*
- h. *Predominantly of iron or steel or a combination of both*
- i. *Produced in the United States* (Sometimes also referred to as the “Domestic Production requirement”)
- j. *Section 70917(c) Materials* (i.e., certain materials used in construction that are specifically excluded from being categorized as “construction materials”; as such, the Buy America Preference is not applied to these materials.

Additionally, the following terms are not defined in 2 CFR 184.3, but are important for a proper understanding of BABA and its application:

- k. *Project* – means the construction, alteration, maintenance, or repair of public infrastructure in the United States.

- l. *Infrastructure* – Infrastructure includes, at a minimum: the structures, facilities, and equipment for 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; buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy, including electric vehicle (EV) charging.
- m. *Public infrastructure* – The Buy America Preference does not apply to non-public (private) infrastructure. For purposes of compliance with BABA, infrastructure should be considered “public” if it is:
 - (1) publicly owned (owned, operated, funded and managed, in whole or in part, by any unit or authority of a Federal, State, or Local government-including U.S. Territories and Indian Tribes); or
 - (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose”, and therefore “public”, if it is privately-owned but operated on behalf of the public or is a place of public accommodation.

II. Buy America Preference

A. REQUIREMENTS

The Buy America Preference requires that any award (1) made after May 14, 2022; or (2) to which additional federal funding is added after May 14, 2022, must comply with the following: “None of the funds made available for a federal financial assistance program for [public] 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.”

Note that there are some caveats, which are discussed below; additionally, the Build America, Buy America Act authorized a waiver process for financial assistance recipients to secure a waiver to the need to comply with the Buy America Preference under certain circumstances, which is discussed further in Section III.

B. APPLICABILITY

Applicability to Awards: Generally

In general, the Buy America Preference applies to all federal financial assistance awarded to “Non-Federal entities” when the project includes the construction, alteration, maintenance, and/or repair of “public” infrastructure in the United States.

The Buy America Preference applies to an entire infrastructure project, even if it is funded by both Federal and recipient cost share or non-Federal funds under one or more awards. In other words, if a recipient receives a Federal award for an infrastructure project, the Buy America Preference applies to both the Federal funds and the cost share/non-Federal funds used for the infrastructure project.

Any funding modification (continuation award, supplemental award, renewal award, or any other incremental or additional funding modification) made on or after May 14, 2022, to an existing covered awards (i.e., covered awards made prior to May 14, 2022) must incorporate the Buy America Preference term and condition (see Section V) into that award.

Applicability to Awards: Prime Recipient Entity Type

“Non-Federal entities,” as defined in the governmentwide financial assistance regulations at 2 CFR 200.1, specifically include States, local governments, Native Tribes, Institutions of Higher Education, and non-profit organizations that carry out a Federal award as a recipient or subrecipient. This term does not include for-profit entities, and as a result BABA does *not* apply to awards which include a for-profit entity as the Prime Recipient. OMB Memo M-24-02 reiterates this exclusion of for-profit entities from the standard definition of “non-Federal entity.”

Note, however, that this general exclusion is only true where the for-profit entity is the prime recipient. If the Buy America Preference is applied to an award where the prime is a non-federal entity (i.e., the prime recipient is a State, local government, Tribal government, institution of higher education, or non-profit organization), the Buy America Preference must be flowed down to all sub-awards for work performed under the infrastructure project, regardless of sub-recipient entity type, including for-profit entities.

In other words: if BABA is included in the prime award, it must be flowed down to all subrecipients regardless of entity type; conversely, if BABA is not included in the prime award, then it does not apply to any subrecipients, even if they are a non-Federal entity to whom BABA would normally apply.

Applicability to Awards: Public vs. Non-public Infrastructure

Furthermore, BABA only applies to public infrastructure, which is defined in Section I(m) above. This means that BABA does *not* apply to work conducted on or at privately-owned infrastructure. For example, BABA would not apply to federally-funded work being conducted on a privately-owned building, such as a private residence. For purposes of this requirement, when DOE or the applicant/recipient is attempting to determine if an infrastructure involved in a project is public, they must consider whether the infrastructure in question is:

- Publicly owned;¹ or
- Privately-owned but “utilized primarily for a public purpose,” such as if it is operated on behalf of the public or is a place of public accommodation.

If either of these conditions is true, then the infrastructure is considered “public” for purposes of determining BABA applicability to the project. The CO and/or program office should consult their cognizant program legal counsel for questions or assistance in cases where this classification is not straightforward.

The chart on the next page provides a simplified reference for determining BABA applicability to an award.

¹ I.e., owned, operated, funded, and managed, in whole or in part, by any unit or authority of a Federal, State, or local government; this includes U.S. territory governmental and Native Tribal governments).

Quick Look: Applicability to Awards

In general, when attempting to determine whether BABA applies to a given project, ask the following questions:

- 1. Is the recipient a State, local government, Native Tribe, Institution of Higher Education, or non-profit organization?**
- 2. Does the project involve construction, alteration, maintenance and/or repair of any of the following:**
 - 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;
 - Real property; or
 - Structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.
- 3. Is the infrastructure in question publicly owned (or privately-owned but utilized primarily for a public purpose)?**

If the answer to all three of these questions is “yes” for a given federal award, then BABA most likely applies.

Applicability to Individual Goods: Generally

Beyond making a determination regarding applicability of the Buy America Preference to an award, the applicant—with assistance and oversight from DOE—must also determine which of the equipment and goods used in the project must be “produced in the United States,” as the Buy America Preference requires. This “produced in the United States” standard, also called the *Domestic Production Requirement*, does not apply to every article, supply, or material used in the project. Rather, the BABA statute, supplemented by the BABA regulations at 2 CFR 184 and the M-24-02 OMB memorandum provide guidelines to which

articles, supplies, and/or materials must be subjected to the Buy America Preference.

First, the preference only applies to articles, materials, or supplies which falls into one of the following categories *at the time it is brought to the work site for incorporation into an infrastructure project*:

- (i) Iron or Steel products;
- (ii) Manufactured products; or
- (iii) Construction Materials.

Furthermore, it is only applied to materials from the categories above that are or will be consumed in, incorporated into, or permanently affixed to the infrastructure. Each category has different standards—discussed at length in 2 CFR 184—that must be met in order for products within that category to be deemed “produced in the United States,” and therefore compliant with the Buy America Preference.

The Buy America Preference does not apply to non-infrastructure expenditures under a covered award that also includes an infrastructure project, nor does it 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 or permanently affixed to the infrastructure. It also 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.

Applicability to Individual Goods: 70917(c) Materials

Also note that there is a sub-category of Construction materials—called “Section 70917(c) Materials” (named for the section of the Build America, Buy America Act that addresses them) that are *specifically excluded from* categorization as a “Construction material.” 70917(c) materials are cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives as provided in section 70917(c) of BABA. Section 70917 (c) materials are excluded from Construction materials. Asphalt concrete pavement mixes are typically composed of asphalt cement (a binding agent) and aggregates such as stone, sand, and gravel. Accordingly, asphalt is also excluded from the definition of Construction materials.

OMB clarifies that “Section 70917(c) materials, on their own, are not manufactured products. Further, Section 70917(c) materials should not be considered manufactured products when they are used at or combined proximate

to the work site—such as is the case with wet concrete or hot mix asphalt brought to the work site for incorporation. However, certain Section 70917(c) materials (such as stone, sand, and gravel) may be used to produce a manufactured product, such as precast concrete. Precast concrete is made of components, is processed into a specific shape or form, and is in such state when brought to the work site.” Furthermore, wet concrete should not be considered a manufactured product if not dried or set prior to reaching the work site.

OMB provides further clarification in 2 CFR 184 on the circumstances under which a determination is made that Section 70917(c) materials should be treated as components of a manufactured product. That determination is based on consideration of: (i) the revised definition of the “manufactured products” at 2 CFR 184.3; (ii) a new definition of “section 70917(c) materials” at 2 CFR 184.3; (iii) new instructions at 2 CFR 184.4(e) on how and when to categorize articles, materials, and supplies; and (iv) new instructions at 2 CFR 184.4(f) on how to apply the Buy America preference by category. Consult cognizant program legal counsel for assistance, as appropriate.

Applicability to Individual Goods: “Produced in the United States”

As noted above, there are different standards that are applied to the different categories—iron and steel, manufactured products, and construction materials—to determine if a given item meets the “produced in the United States” standard that is required by BABA.

Produced in the United States:

- a. For **iron and steel** this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- b. For **manufactured products** this means:
 - i. the manufactured product was manufactured in the United States; **and**
 - ii. 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. The costs of components of a manufactured product are determined according to 2 CFR 184.5.
- c. For **construction materials** this means all manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6

for more information on the meaning of “*all manufacturing processes*” for specific construction materials.

Applicability to Individual Goods: Tying it all together

As a quick summary of the information above, when the Buy America Preference is applied to an award, that means that all iron, steel, manufactured products, and/or construction materials must be “produced in the United States” in order for the award to be compliant. However, this only applies to items which are consumed in, incorporated into, or permanently affixed to the infrastructure in question. Furthermore, it does not apply to any items that are only brought to the job site temporarily or are not going to be permanently affixed—therefore, things such as computers and related equipment, temporary scaffolding, office chairs, sensors, etc. that will be removed from the job site upon completion are excluded from compliance with the “produced in the United States” standard.

III. Buy America Preference Waiver

A. Types of Waivers

Pursuant to 2 CFR 184.7, DOE may waive the application of the Buy America Preference under a specific award or across multiple awards in any case in which it determines that:

1. Applying the Buy America Preference would be inconsistent with the public interest (“**Public Interest waiver**”);
2. 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 (“**Non-Availability waiver**”); or
3. 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 25 percent (“**Unreasonable Cost waiver**”).

A Buy America Preference waiver can be scoped in two ways:

1. General Applicability² – Applicable to multiple awards that share a common characteristic.
2. Project specific – Applicable to a single award.

² The submission and approval process for General Applicability waivers is not covered in this document. If you would like to propose a General Applicability waiver for submission, please contact doe_oapmpolicy@hq.doe.gov.

B. Project Specific Waiver Requests

Requests to waive the application of a Buy America Preference under a specific project/award must be submitted by the recipient, in writing with sufficient information:

At a minimum, the information should be qualitatively enough to:

- demonstrate adequate due diligence was performed in analyzing the request and researching domestic availability/ capacity of the items;
- determine whether the waiver request is consistent with BABA law and policy; and
- provide sufficient information for public review and comment.

All waivers must include the following:

- Justification Statement outlining which of the three waiver justifications (Non-availability, Unreasonable cost, Public Interest) the waiver is seeking to utilize. This statement must clearly demonstrate how the waiver meets the threshold requirements for the justification its citing. (i.e., for non-availability, it must demonstrate that the products for which a waiver is sought are not available in reasonably available quantities or satisfactory quality).
- Federal awarding agency organizational information (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code);
- Financial assistance listing name and number;
- Federal financial assistance program name;
- Recipient name and Unique Entity Identifier (UEI);
- Federal Award Identification Number;
- A brief description of the award – project objectives, location, and the specific project activities being performed on public infrastructure;
- Total estimated Financial Assistance award value, inclusive of recipient cost share;
- Total estimated infrastructure costs (i.e., estimated costs of the Iron, Steel, Manufactured Products and Construction Materials being purchased under the award and utilized in the infrastructure project);
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the requester seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and

relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;

- A detailed justification as to how the non-domestic item(s) is/are essential to the project or program and the anticipated impact to the project or program if no waiver is issued;
- A certification that the requester made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the requester to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation;
- A description of the market research conducted that includes who conducted the market research, when it was conducted, sources that were used, and the methods used to conduct the research; and
- For final (i.e., when approval is being sought following the public comment period) waivers, any relevant comments received through the public comment period, and DOE’s adjudication of those comments.

The General Services Administration created and deployed a standard template that recipients can use to submit a BABA waiver that generally covers all of the information requested above. It can be found via this link: [Optional Form 2211 \(OF2211\)](#). This form is intended to aid the recipients; recipients are not required to use this form in order to submit the necessary information, it just offers them an optional template in which to do so. In addition, DOE staff should note that waiver requests that adhere to the following principles are generally more likely to be approved by the Made in America Office:

- **Time-Limited:** Consider a waiver constrained principally by a length of time, or phased-out over time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project/award. When requesting such a waiver, the requester should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).
- **Targeted:** Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary

and justified. Waivers should not be overly broad as this will undermine domestic preference policies.

- **Conditional:** Waivers may be requested with specific conditions that support the policies of the Build America, Buy America Act and [Executive Order 14017](#).

Should DOE staff find the need to engage the requester in discussions to ensure that all required information is present, the above principles would be worth reiterating.

C. Project Specific Waiver Requests Submittal and Review

Requests (from the recipient or sub-recipient) to waive the application of the Buy American Preference under a specific project/award must be submitted (in writing) by the Prime Recipient to the GO in accordance with the terms and conditions of their award (herein referred to as the Recipient's proposed waiver).

DOE must review the Recipient's Buy America Preference proposed waiver to determine whether to grant a project-specific waiver for those covered items listed in the request. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. Proposed waivers are subject to GO review, DOE Made In America Senior Accountable Official (MIA SAO) review (delegated to the HCA), OMB initial review of no less than 10 business days, a public comment period of no less than 15 calendar days, and a final OMB review of no less than 10 business days.

For NNSA, contact NNSA at (505) 845-4337 to get information on how to submit NNSA Recipient project specific waiver requests for NNSA review.

The following is a general overview of the waiver approval process:

1. GO/Program Review

The GO must review the Recipient's proposed waiver (including the market research, cost-benefit analysis, cost comparisons, PSCs and NAICS) to ensure that the Recipient provided all the information required by the term and condition of the award and that the information regarding the award and Recipient are correct.

The GO, in consultation with the Program Office, must create a waiver package (to include the OF 2211 submitted by the recipient, the OMB FFA form (see Attachment 3 for the OMB FFA form

instructions), the proposed waiver and GO recommendation) for the HCA to review. The GO recommendation must include, at a minimum, a description of the due diligence the GO and Program Office performed in reviewing the Recipient's proposed waiver, and a recommendation for the proposed waiver based on their due diligence. The description should provide the details on what due diligence the GO and Program Office performed on the Recipient's proposed waiver and the justifications and certifications used by the Recipient to support the request. In performance of their due diligence, the GO may request, and the Recipient must provide, additional information for consideration of the proposed waiver.

The GO must follow their local procedures for routing documents to their HCA.

If, as a result of performing due diligence, the GO determines that DOE does not recommend approval of the proposed waiver, the GO should promptly notify the Recipient of the rejected proposed waiver and provide the details of the due diligence to include any domestic sources found.

2. HCA/OMB Initial Review

As the MIA SAO designee, the HCA must review the waiver package to ensure that sufficient information and analysis has been provided and documented to support the proposed waiver. Once the HCA concurs that the proposed waiver is consistent with the law and approves sending it to OMB, the GO will be notified by the HCA. The GO then emails the OMB FFA form and waiver to OMB at MBX.OMB.MadeInAmerica@omb.eop.gov for concurrence.

OMB has up to 10 business days to review the proposed waiver. The GO will work with the Program Office as needed to address any comments or additional information requests from OMB.

The waiver cannot be posted for public comment on the DOE BABA website until the HCA and OMB have agreed on the content of the waiver.

3. Public Review and Comment Period

Once OMB concurs on the proposed waiver, the GO must post the proposed waiver first to the DOE BABA waiver website. After confirmation of posting to the DOE BABA website, the GO submits the proposed waiver to the OMB Made in America waiver

website. **The proposed waiver must be posted** for a minimum of 15 calendar days on the DOE BABA waiver website to get public comment and feedback.

See paragraph D, “Posting Proposed and Final Waivers” below.

The GO, or designee, must be the POC for receipt of the public comments. The GO must provide an email address to be used for the receipt of the public comments and it must be clearly stated on the proposed waiver.

4. GO Adjudication of Comments

After the public comment period concludes, the GO must adjudicate the comments received in coordination with the Program Office and Recipient as necessary. The GO shall prepare: 1) a summary of the public comments received and the adjudication of those comments; 2) a final waiver incorporating any changes resulting from the adjudication of the public comments (a summary or change to the proposed waiver is not required if public comments were not received); and 3) a GO recommendation (approval or dismissal) on the waiver.

The GO sends the waiver package including any summary document, a final waiver, and the GO’s recommendation to the HCA for final review.

5. HCA Final Review

The HCA will review the waiver package to ensure appropriate adjudication of public comments and that any resulting changes in the final draft waiver align with BABA law and policy, and support the recommendation provided by the GO/Program Office.

If the HCA determines the final waiver is not supported, the HCA will promptly inform the GO of this decision so the GO can provide the specific details to the Recipient.

If the HCA concurs with the final waiver, the HCA informs the GO who sends the adjudication of public comments and BABA waivers for approval by the Secretary or their designee.³ If secretarial approval is obtained, the GO then sends the adjudication

³ Check within your program office to determine who this authority has been delegated to and the procedures for obtaining such approvals; ideally, this authority should be available to the HCAs, but delegations may change over time and this FAL will not be updated to reflect those changes each and every time they occur.

of public comments and final waiver to OMB OMB at MBX.OMB.MadeInAmerica@omb.eop.gov for their final policy/legal determination.

OMB has up to 10 days to review the final waiver to ensure it is consistent with applicable law and policy and will notify the GO of its determination or need for additional information.

6. Approved Waivers

After OMB notifies the GO that their final determination is complete and does not object to the final waiver, the GO notifies the HCA and submits the waiver for final approval by the Secretary or their designee. Following final Agency approval, the GO should notify the recipient.

The GO must post the final waiver first to the DOE BABA waiver website. After confirmation of posting to the DOE BABA website, the GO submits the final waiver to the OMB Made in America waiver website.

See paragraph D, “Posting Proposed and Final Waivers” below.

NOTE: All text from the proposed waiver should be updated to reflect that the waiver is final.

The GO must modify the award to incorporate the approved project-specific waiver (waiver items, timeline, other details in the waiver). All waiver documentation (waiver request, supporting documentation, approved waiver) must be included in the award file.

D. Posting Proposed and Final Waivers

Once concurrence is received from OMB, all proposed waivers and final waivers, are posted to the [DOE Buy America Preference Waiver Requests webpage](#).

To post the webpage, the GO or the BABA Coordinator will email the waivers to ma60webservices@hq.doe.gov. The email subject line shall be: “[‘Proposed’ or ‘Final’] BABA Waiver for Posting – [Item waiver is for].” MA-625 (Systems Division) will post the waiver to the DOE BABA website and notify the GO.

Upon notification that a proposed waiver is posted to the DOE website, the GO shall submit the waiver to the OMB BABA site at: <https://www.madeinamerica.gov/admin/login/>, then notify OMB and provide the waiver link, via email, to MBX.OMB.MadeInAmerica@obm.eop.gov.

E. Use of an Approved Waiver

Approved project-specific waivers must be incorporated into an existing award through an amendment of the award by the GO that identifies the specific details and parameters of the project-specific waiver. For new awards, the GO must ensure that an Award term is created and used to identify the specific details and parameters of the project-specific waiver.