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2025

DEPARTMENT OF THE INTERIOR

Pacific Island Territories Waiver

1. Summary

Agency: Department of the Interior.

Final Waiver: The Department of the Interior (DOI) is issuing a temporary general applicability public interest waiver of the requirements of Section 70914(a) of the Build America, Buy America Act (BABA) included in the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58) for federal financial assistance awarded for infrastructure projects located in the U.S. Pacific Island territories of the Commonwealth of Northern Mariana Islands (CNMI), Guam, and American Samoa, collectively referred to as the “Pacific Island territories.”

This waiver would provide the time for the agency to collect and analyze evidence to determine if a more targeted waiver of these requirements is in the public interest. The waiver would also allow time for the agency to offer technical assistance to potential assistance recipients in the remote communities of the Pacific Island territories. The waiver will remain in effect for eighteen (18) months after the effective date of the final waiver (insert date) and will be reviewed as often as necessary.

Applicability: This waiver permits the use of non-domestic iron, steel, manufactured products, and construction materials in infrastructure projects located within the Pacific Island territories of CNMI, Guam, or American Samoa when the total Federal award exceeds the Simplified Acquisition Threshold of \$250,000. DOI applies the waiver to all awards obligated after the effective date and, in the case of awards obligated prior to the effective date, all expenditures for non-domestic iron, steel, manufactured products, and construction materials incurred after the effective date.

The comment period for this waiver was open for fifteen (15) days. Comments were due by June 30, 2023. See the Section 7 of this waiver “Solicitation of Comments” for more information. Further information on this waiver may be found on DOI’s website at <https://www.doi.gov/grants/buyamerica>.

2. Background

The Buy America preference set forth in section 70914(a) of BABA included in the IIJA, requires all iron, steel, manufactured products, and construction materials used for infrastructure projects under federal financial assistance awards be produced in the United States.

Under section 70914(b) and in accordance with the Office of Management and Budget (OMB)’s Guidance Memorandum M-22-11, *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*, DOI may waive the BABA application in any case in which it finds that: (i) applying the domestic content procurement preference would be inconsistent with the public interest; (ii) types of iron, steel, manufactured products, or construction materials are not produced in the U.S. in sufficient and

reasonably available quantities or of a satisfactory quality; or (iii) the inclusion of iron, steel, manufactured products, or construction materials produced in the U.S. will increase the cost of the overall project by more than 25 percent. All waivers must have a written explanation for the proposed determination; provide a period of not less than fifteen (15) calendar days for public comment on the proposed waiver; and submit the proposed waiver to the OMB Made in America Office for review to determine if the waiver is consistent with policy.

DOI provides grants to the three Pacific Island territories of Guam, American Samoa, and CNMI. The majority of DOI financial assistance awards to Pacific Island Territories provide funding to state government agencies such as the Department of Homeland Security, Department of Public Works, Department of Power Authority, Department of Marine and Wildlife Resources, Department of Port Administration. Examples of current DOI funded programs include, but are not limited to capital improvement projects, energy programs, maintenance and repair of public schools, roads, water and waste treatment facilities, and ports.

Below is a summary of DOI financial assistance funding to the Pacific Island Territories:

- In FY 2021, DOI issued over \$103 million to Pacific Island territories via 320 financial assistance agreements, of which 96 agreements exceeded the Simplified Acquisition Threshold (SAT) and are not covered under the DOI Small Agreements waiver.
- In FY 2022, the Pacific Island territories received over \$101 million dollars through DOI's various grant programs where infrastructure is an eligible activity and may be subject to BABA. This funding supports approximately 320 financial assistance agreements, of which 86 agreements are above the SAT, and are not covered under the DOI's Small Agreements Waiver.
- Currently, there are 182 DOI financial assistance agreements to Pacific Island Territories which are above the SAT and may include various infrastructure projects which will trigger compliance with BABA requirements. DOI estimates approximately 30 individual projects may require individual BABA waivers.

3. Waiver Justification

DOI is issuing a public interest waiver to waive BABA requirements in infrastructure projects located within the Pacific Island territories of CNMI, Guam or American Samoa. The duration of the waiver is eighteen (18) months from the effective date of the final waiver.

Economies in the Pacific Islands are over 5,000 miles from the mainland United States and must import products via air or sea. These economies have few local heavy manufacturers and largely rely on established regional supply chains from east Asia, Australia, and New Zealand. Most goods, equipment materials and supplies are imported and rely on shipping with associated timelines and unpredictable shipping fuel costs fluctuations. Moreover, materials sourced from the United States lead to additional shipping fees and longer lead times, thus significantly extending construction activity schedules. Lastly, ongoing gaps in supply chain availability impact lead times for materials, increasing project timelines. For these reasons, the agency is concerned that complying with the domestic sourcing requirements in BABA may increase

already elevated project time and costs—particularly in the short run—and seeks time to better understand the local manufacturing footprint and the balance of equities for residents of the Pacific Island territories. The agency is aware that substantial changes to shipping and supply chains to incorporate domestic sourcing requirements in the Pacific Island territories could take multiple years to establish.

These economic and logistical constraints were also confirmed by the market research that DOI performed. In 2021, CNMI compared prices and delivery times for electric generators from the U.S. and Japan and although the prices were comparable, the delivery time for the U.S. generators would occur twelve (12) months later than Japan.

In 2022 and 2023, the DOI engaged in the outreach efforts below to Pacific Island Territories through meetings, webinars, workshops to gauge the impacts of the BABA.

In May 2023, DOI hosted the 2023 Territorial Climate and Infrastructure Workshop. The workshop included many representatives from various Territorial agencies/departments who commented that BABA procurement requirements resulted in significant cost increases and delays in project timelines.

In February 2023, DOI hosted the Interagency Group on Insular Areas which was attended by White House officials such as the Senior Advisor to the President for Infrastructure and the Senior Director of the White House Office of Intergovernmental Affairs, as well as Governors of the Territories. During this event, the Governors of the Territories expressed concerns related to BABA implementation and potential project delays. The Governors also requested federal agencies be flexible in these requirements and consider waivers.

During the summer of 2022, and in early 2023, DOI conducted five (5) webinars to inform recipients of financial assistance of BABA requirements and to allow recipients to share with DOI any problems associated with BABA implementation requirements to their respective programs and jurisdiction. One webinar included 33 participants from American Samoa, CNMI, Guam. DOI also received letters from American Samoa, CNMI, and Guam about the impacts of BABA. The feedback collected through the webinars indicates that the isolated geography in the south Pacific Ocean and the associated high costs and lack of availability of construction materials could create project delays, reduce the pool of available vendors, and greatly complicate their ability to successfully manage and complete grant-funded infrastructure projects on schedule. The territories also expressed concern that BABA requirements could greatly add to the already significant challenges of working in a small, geographically remote territory.

DOI indicates that it is in the public interest to waive the BABA requirements for Federal financial assistance awarded for infrastructure projects in the Pacific Island territories while we work to gather more information on supply chains, costs, and impacts. This waiver is critical to provide the time for the agency to collect and analyze evidence to determine if a more targeted waiver of these requirements is in the public interest. The waiver would also allow time for the agency to offer technical assistance to reduce the administrative burden to potential assistance recipients in the remote communities in the Pacific Island territories where complying with the domestic sourcing requirements in BABA presents challenges. The agency is concerned that

failure to provide these remote infrastructure projects such flexibilities could perpetuate systemic barriers to opportunities and benefits and limit the agency's ability to deliver resources and benefits equitably to all in these Pacific Island territories. Additionally, DOI may need to dedicate significant staff and contractor time to assist extremely remote communities with implementing preference requirements for the first time and to support the increased workload to process project-specific waivers. DOI is interested in determining if these concerns justify a targeted waiver and whether its initial assessment may or may not be borne out by evidence.

4. Impact Absent the Waiver

Without the waiver, infrastructure projects located within the Pacific Island territories will experience challenges with product delivery, availability, reliability, and project scheduling. Infrastructure project schedules rely on readily available products delivered within reasonable timeframes. Due to the extreme distances that manufacturers for products produced in the mainland United States would have to ship products to the Pacific Island territories and due to the lack of existing local product supply networks for these products, manufacturers may not be able to assure on-time delivery of compliant products and associated projects in the Pacific Island territories could potentially face unreasonable scheduling uncertainty.

On the other hand, the waiver will likely help grant recipients establish rules and procedures to manage the BABA requirements. Furthermore, the waiver will provide recipients more options to efficiently complete projects.

Uncertainties regarding capacity, shipping, and supply networks make domestic sourcing in the Pacific Island territories challenging for assistance recipients, shippers, and DOI staff in the short run. DOI is engaging to understand opportunities to leverage existing shipping and transportation processes to make domestic sourcing feasible over the longer term.

5. Assessment of Cost Advantage of a Foreign-Sourced Product

Under OMB Memorandum M-22-11, 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. DOI’s analysis has concluded that this assessment is not applicable to this waiver.

6. Duration of Waiver

The duration of the waiver is eighteen (18) months after the effective date of the final waiver. DOI will review this waiver in 12 months to assess whether it remains necessary to the fulfillment of DOI’s missions and goals and consistent with applicable legal authorities, such as the IIJA, Executive Order 14005, and OMB M-22-11. DOI may, based on the results of that review, terminate the waiver, or take action to develop a new waiver in consultation with the MIAO.

7. Solicitation of Comments

Final Waiver: The notice was posted on June 15, 2023, to satisfy the requirement under section 70914 of BABA to publish any proposed BABA waiver and provide the public with a reasonable period of time for notice and comment. The Department of the Interior sought public and

industry comment from all interested parties and received twenty-two (22) public comments in response to the proposed waiver. This notice closed for comments on June 30, 2023. A summary of the public comments received are as follows:

- Twenty-one (21) entities expressed support for the waiver. Six (6) of the twenty-one (21) entities requested an extension to the waiver period or a blanket waiver.
- One (1) entity disagreed with the waiver in its entirety indicating the proposed waiver was not in the public interest.

In response to the comments received, a determination was made by the DOI to proceed with the waiver as written. The majority of the comments expressed strong support for the waiver. DOI considered the suggestions to extend the period of the waiver, but has kept the duration of the waiver at 18 months, and will review the waiver in 12 months and consult with the Office of Management and Budget, Made in America Office to determine the need for a new waiver.