



## OFFICE OF LAND AND EMERGENCY MANAGEMENT

WASHINGTON, D.C. 20460

### **DECISION MEMORANDUM**

**SUBJECT:** Project-Specific Nonavailability Waiver of Build America, Buy America Act (BABA) Manufactured Products Requirements for the County of Hawaii, HI for commercial-grade dishwasher

**FROM:** John Busterud,  
Assistant Administrator

### **Decision**

The U.S. Environmental Protection Agency is hereby issuing a project-specific nonavailability waiver for manufactured products pursuant to the Buy America Preference set forth in section 70914 of the Build America, Buy America Act (BABA) included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), under the authority of section 70914(b), to the County of Hawaii, HI, (Applicant) for a commercial-grade dishwasher. This waiver permits the use of a commercial-grade dishwasher in the Applicant's project because no domestic manufacturers produce alternatives that meet BABA requirements and the technical specifications of the project. The waiver is applicable to expenditures made for a commercial-grade dishwasher on or after the effective date of the final waiver until December 31, 2028.

This is a project-specific waiver. Any other projects that wish to use the same product must apply for a separate waiver.

### **Background**

The Buy America Preference set forth in section 70914 of the BABA included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), 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), the EPA may waive the application of the Buy America Preference, in any case in which it finds that: applying the domestic content procurement preference would be inconsistent with the public interest; types of iron, steel, manufactured products, or construction materials are not produced in the US in sufficient and reasonably available quantities or of a satisfactory quality; or 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 Office of Management and Budget's (OMB) Made in America Office for review to determine if the waiver is consistent with policy.

## **Summary**

Waiver Type: Nonavailability of a manufactured domestic product in sufficient and reasonably available quantities or of a satisfactory quality.

Waiver Level and Scope: Project level waiver of the manufactured products requirement for specific products for a single project. No other project will utilize the waiver.

Proposed Waiver Description: Project-specific nonavailability waiver of BABA manufactured products requirements to the County of Hawaii, HI, for a commercial-grade dishwasher planned for the SWIFR grant.

Project Summary: The County of Hawaii intends to purchase a commercial-grade dishwasher that is integral to the implementation of a city-scale reusable food ware and refillable bottle system in Hilo, Hawai'i that is designed by and for the whole community. Given limited space in local food service establishments, individual dishwashers servicing a food waste and bottle reuse program are not feasible. Instead, the County seeks to create a central washing system that will alleviate the burden on individual businesses and allow them to transition away from single-use materials by providing reuse as a service. A high capacity, efficient dishwasher is critical to the success of the program and must include necessary drying capabilities that allow reusable food ware to be repacked immediately post-wash, eliminating the need for a dedicated drying area and excess reusable asset inventory. The County anticipates that the approach will create the reuse of 1 million reusable food ware items in place of disposable food ware in year 1 of implementing the reuse system. There is an anticipated diversion of 500 tons per year of disposable food ware, a significant share of which would have been municipal solid waste.

Length of the waiver: From the effective date of the final waiver until project closeout, which is anticipated to be December 31, 2028.

Summary of Items Covered in the Proposed Waiver (including NAICS): The County of Hawaii is seeking a waiver for a commercial-grade dishwasher (NAICS Code 423440; PSC Code 7320). The commercial-grade dishwasher is a manufactured product pursuant to BABA. The County proposes to procure a commercial-grade dishwasher that does not meet the BABA domestic content requirements because no BABA-compliant product that meets the project specifications was identified by the recipient, or through the EPA's market research completed in March and April 2025.

The County's specifications are driven by several factors including:

- Capacity: the dishwasher must be capable of sanitizing and drying at least 6,000 cups per hour;
- Water efficiency: the dishwasher must incorporate an active filtration system to minimize water and detergent consumption;
- Energy efficiency: The unit must optimize energy use through heat recovery and adaptive heating adjustments;
- Sanitation: The unit must integrate hygiene monitoring systems, self-cleaning functionality, and filtration systems to ensure compliance with sanitation standards and prevent cross-contamination;
- Functionality: The unit must ensure that plastic items exit the machine dry and ready to be repacked immediately post-wash. To accomplish this, the unit must incorporate a modular design to account for loading, prewash, wash, rinse, drying, cooling, and unloading all within the same unit; and,
- Safety: The unit must contain emergency stop mechanisms positioned at critical points for operator safety.

## **Description of Efforts Made to Avoid the Need for a Waiver**

Both the County of Hawai'i and EPA made every effort to obtain a BABA-compliant commercial-grade dishwasher that met the grantees required specifications. This is documented in the County's waiver request and supporting documentation, and in the description of EPA's extensive research efforts listed below.

Following EPA guidance, the County conducted extensive research in 2025, reviewing product information for four companies that sell commercial-grade dishwashers. Through this review, the assistance recipient found no product that met their required specifications and was BABA compliant.

The County submitted the official waiver request to EPA in March 2025. EPA conducted market research using the key specifications provided by the assistance recipient. EPA used the General Service Administration's (GSA) Federal Procurement Data System (FPDS) and GSA Advantage to conduct additional market research. GSA's FPDS is a database that allows government agencies to search for active and past contracts procured by the federal government. GSA Advantage is a system that allows government agencies to research numerous products and services for availability from thousands of contractors in one centralized location. The FPDS and GSA Advantage searches identified 12 sources that could potentially provide a solution were contacted. In total, EPA spoke with seven (7) manufactures, and one manufacturer indicated they may have been able to provide a BABA certification. EPA instructed the assistance recipient to follow up with the potential manufacturer and one potential supplier. The assistance recipient did so and noted that the most comparable product supplied does not meet the key specifications for in-unit drying capabilities that is needed for the dishwashing unit.

The assistance recipient and EPA identified products that met some of the specifications; however, products either were not compliant with BABA, did not meet the key specifications for the unit, or offered a leasing model rather than a purchase model to obtain the unit. For example, only one manufacturer provides units with the necessary drying capabilities that allow reusable food ware to be repacked immediately post-wash; however, this manufacturer operates exclusively under a leasing structure. Leasing a commercial-grade dishwasher is a long-term financial obligation for the grantee rather than a one-time capital purchase under the grant, allowing for long-term success of the program after grant funding concludes. Most importantly, the leased unit is not BABA-compliant.

Absent a waiver, the recipient would fail to meet its grant workplan objectives because the other products do not meet required specifications. Without a commercial-grade dishwashing unit that incorporates the key specifications such as in-unit drying, the County would have to expend a significant amount of time and resources on buying multiple washing and drying systems that would limit the impact of the grant funding and/or not allow for the long-term success of the food ware reuse program. The County would have to expend a significant amount of time and resources finding new locations that would either fit a different unit with smaller footprints or find locations that are able to hold not only the dishwasher but also a space to house the drying facilities needed. These spaces would need to have access to water for input, and piping to drain effluent output. In addition, the volume of throughput would decrease, as processing times would increase and necessitate multiple venues with additional oversight and infrastructure support. Without the waiver, the County would continue its reliance on landfilling and transportation costs would remain and increase over time.

## **Assessment of Cost Advantage of a Foreign-Sourced Product**

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 public interest waiver. The EPA'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.

## Summary of Public Comments

A memorandum soliciting public comments on the Applicant's waiver request was posted on the EPA's public facing webpage and a notice of the waiver request was also posted to the Made in America website on September 17, 2025, to satisfy the requirement to publish any proposed project-specific waiver and provide the public with fifteen (15) days to submit comments. The EPA sought public and industry comment from all interested parties. The comment period for the proposed waiver closed on October 1, 2025. The EPA received no (zero) comments, and therefore no substantive changes were made between this final waiver and the version that was posted for public comment.

Description of Award Recipient Name and/or Unique Entity Identifier (UEI): The County of Hawaii, HI – F7S9S5D2CSP3

Federal Financial Assistance Identification Number (FAIN): 98T89201

Federal Financial Assistance Listing Name: Solid Waste Infrastructure for Recycling Grant

Federal Financial Assistance Listing Number: 66.920

Common Government-wide Accounting Classification Agency Code: 068

Total Amount to be Waived: Procurement Sensitive

Federal Financial Assistance Funding amount: \$1,522,130

Total Cost of Infrastructure Expenditures: \$316,000