



Clean Water
State Revolving Fund

UNDERSTANDING BABA GENERAL APPLICABILITY WAIVERS AND PROCESSING PROJECT- SPECIFIC WAIVERS

AGENDA

- Waiver Principles
- Available General Applicability BABA Waivers
- Understanding the Details
 - ✓ Amended SRF Design Planning Waiver
 - ✓ De Minimis
 - ✓ Small Award
 - ✓ EV Charger Waiver
 - ✓ Minor Components
- Product/Project-Specific Waivers and Waiver Processing
- The Future of BABA Waivers
- Resources

Disclaimer

This presentation cannot substitute for official guidance, nor can it change or contradict existing guidance or statute. The purpose of this session is to provide an overview of the domestic preference requirements, including American Iron and Steel and the Build America, Buy America Act, as currently understood by the Environmental Protection Agency. We hope to provide you with a better understanding of the requirements, with the caveat that we are human and any potential incorrect statements or errors we may make during this presentation do not change official statute or guidance.

AGENDA

- **Waiver Authority and Principles**
- Available General Applicability BABA Waivers
- Understanding the Details
 - ✓ Amended SRF Design Planning Waiver
 - ✓ De Minimis
 - ✓ Small Award
 - ✓ EV Charger Waiver
 - ✓ AMI Water Meter Waiver
 - ✓ Minor Components
- Product/Project-Specific Waivers and Waiver Processing
- The Future of BABA Waivers
- Resources

WAIVER AUTHORITY

Pursuant to Section 70914(b) of BABA, EPA may waive BABA requirements where EPA finds that:

- Applying the domestic content procurement preference would be inconsistent with the public interest (a “*public interest waiver*”);
- 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
- 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 (an “*unreasonable cost waiver*”)

BABA WAIVER PRINCIPLES

- Time-limited
 - Agencies should identify a short, definite time frame
- Targeted
 - Waivers that are overly broad can undermine domestic preference policies
- Conditional
 - Agencies are encouraged to issue waivers with specific conditions that support the policies of BABA



AGENDA

- Waiver Principles
- **Available General Applicability BABA Waivers**
- Understanding the Details
 - ✓ Amended SRF Design Planning Waiver
 - ✓ De Minimis
 - ✓ Small Award
 - ✓ EV Charger Waiver
 - ✓ AMI Water Meter Waiver
 - ✓ Minor Components
- Product/Project-Specific Waivers and Waiver Processing
- The Future of BABA Waivers
- Resources

AVAILABLE GENERAL APPLICABILITY WAIVERS

- Amended SRF Design Planning Waiver
- De Minimis Waiver
- EV Chargers Waiver
- AMI Water Meter Waiver
- Small Award Waiver
- Minor Components Waiver
- Pacific Island Territories Waiver
- WIFIA Design Planning Waiver

AGENDA

- Waiver Principles
- Available General Applicability BABA Waivers
- **Understanding the Details**
 - ✓ Amended SRF Design Planning Waiver
 - ✓ De Minimis
 - ✓ Small Award
 - ✓ EV Charger Waiver
 - ✓ AMI Water Meter Waiver
 - ✓ Minor Components
- Product/Project-Specific Waivers and Waiver Processing
- The Future of BABA Waivers
- Resources

UNDERSTANDING THE DETAILS: AMENDED SRF DESIGN PLANNING WAIVER

- Finalized on November 13, 2023
- Allows for use by Community Grants (and OSG) projects
- Limits eligibility to FY22 or FY23 appropriations
- Waiver replaces original SRF waiver only for projects funded after amended waiver approval date
- Community Grants projects awarded before amended date, may use waiver if there have been no federal expenditures before November 13, 2023

UNDERSTANDING THE DETAILS: AMENDED SRF DESIGN PLANNING WAIVER

- Waives projects that initiated design planning prior to May 14, 2022
 - “Documentable efforts made...to evaluate and identify...viable options”
 - Provides 8 “prescriptive” categories of qualifying documentation
 - Projects can request case-by-case evaluation review from EPA



UNDERSTANDING THE DETAILS:

AMENDED SRF DESIGN PLANNING WAIVER (CONT'D)

Projects funded with Federal FY22 or FY23 appropriations that completed one of the following eight milestones prior to May 14, 2022, are eligible to use the waiver.

- i. Submitted preliminary engineering report, or equivalent (to the state or to the assistance recipient)
- ii. Issued a Request for Proposal or execution of a contract for design or engineering services (regardless of funding source)
- iii. Execution of an assistance agreement – that includes design
- iv. For project designed by assistance recipient, documentation of design initiation (such as completed preliminary engineering report)
- v. Solicitation of construction contract bids
- vi. Submitted plans and specifications (do not need to be complete) to a state and/or federal funding authority
- vii. Public referendum or public meeting held regarding proposed project
- viii. Evidence of new bonds passed, or other new funding backing secured for project

UNDERSTANDING THE DETAILS: AMENDED SRF DESIGN PLANNING WAIVER (CONT'D)

- Footnote: "For previously planned water infrastructure projects subject to SRF requirements also pursuing a waiver of iron and steel products under BABA, the project may qualify based on the conditions herein provided the project was not already subject to the American Iron and Steel requirements and with the exception of conditions ii, vii, and viii, provided that the documentation demonstrates commencement of the project prior to May 14, 2022."
- If a project covered by the Amended SRF Design Planning waiver may be able to waive the American Iron and Steel requirements based on the above criteria, send an inquiry to BABA-OW@epa.gov with applicable documentation.

UNDERSTANDING THE DETAILS:

AMENDED SRF DESIGN PLANNING WAIVER (CONT'D)

The SRF database needs to track the projects that qualify for the waiver. Project officers should document usage in the project's file.

- ✓ Project name
- ✓ Assistance agreement identification number (e.g., grant or loan number corresponding to the SRF Data System or relevant grants management system)
- ✓ Description of significant manufactured products or construction materials likely subject to the waiver (e.g., a force main construction project could list “three lift station pumps, five valve actuators, three flow meters, and two pressure gauges”)
 - ✓ Up to 10 items. If project has more than 10 significant manufactured products or construction materials subject to the waiver, engineers should use best professional judgment to provide 10 key (major) items to be used, omitting duplicative, minor, and/or miscellaneous products.
 - ✓ Complete materials lists are also acceptable, but not required. Origin of the manufactured products and construction materials is not needed.
- ✓ Date of initiated and documented design activity qualifying project for waiver

UNDERSTANDING THE DETAILS: AMENDED SRF DESIGN PLANNING WAIVER (CONT'D)

- EPA Community Grants POs: Complete Eligibility Form and include completed form in grant project file.
- Form is available internally via the Community Grants program, for EPA PO use only
- For SRF projects, utilize the SRF database to document eligibility decisions, per the terms of the waiver

FOR EPA INTERNAL USE ONLY - DO NOT DISSEMINATE	
Eligibility Form - Amended SRF Design Planning Waiver of Build America, Buy America Requirements	
Recipient Name	
State	
Community Grant Award ID#, if applicable	
Project language as provided in Appropriations Act	
Revised Project language if a Technical Correction was approved.	
Is the project co-funded with federal funds? (Yes/No)	
If yes, what is source of co-funding? (Include funding agency(ies) and program(s))	
Appropriation Year (FY22 or FY23)	
Grant Award Date	
Does the project qualify for the Amended SRF Waiver? (Yes/No)	
If yes, identify the date the applicable milestone met prior to May 14, 2022 (i, ii, iii, etc.).	
i. Submitted preliminary engineering report, or equivalent (to the state or to the assistance recipient)	
ii. Issued a Request for Proposal or execution of a contract for design or engineering services (regardless of funding source)	
iii. Execution of an assistance agreement – that includes design	
iv. For project designed by assistance recipient, documentation of design initiation (such as completed preliminary engineering report)	
v. Solicitation of construction contract bids	
vi. Submitted plans and specifications (do not need to be complete) to a state and/or federal funding authority	
vii. Public referendum or public meeting held regarding	

UNDERSTANDING THE DETAILS: AMENDED SRF DESIGN PLANNING WAIVER (CONT'D)

Scenario #1:

- You receive an email from a project you oversee asking if they can use the amended SRF Design Planning Waiver. In the email, the project indicates it completed its preliminary engineering report (PER) in 2019. Based on your knowledge of the project, you also know the funds for the project were appropriated in 2022.

What are your next steps?

UNDERSTANDING THE DETAILS: AMENDED SRF DESIGN PLANNING WAIVER (CONT'D)

Scenario #1 Next Steps:

- ✓ Were funds appropriated in FY22 or F23?
 - ✓ YES! Funds were appropriated in FY22, so it meets the base eligibility for the waiver.
- ✓ Review the milestones in the waiver. The first milestone specifies that the PER must have been submitted to the state prior to the effective date of BABA to qualify.
 - ✓ Follow up on when the PER was submitted to the state and document the submission.
 - ✓ If this is a community grant project and you're the PO, contact your state counterpart to verify when the PER was received.
- ✓ If the project meets the criteria in the waiver, document use of the waiver in the project's file

UNDERSTANDING THE DETAILS: AMENDED SRF DESIGN PLANNING WAIVER (CONT'D)

Scenario #1 Next Steps:

- ✓ If the project is funded with a community grant, follow up to determine whether it received any previous funding through the SRF or USDA
 - ✓ If not, AIS can also be waived. Details are on the next slide.

- 1) SRF programs and/or the EPA project officers shall ensure that all projects subject to the conditions of this waiver provide evidence of initiating design that qualifies the project for this waiver and shall maintain this evidence with project files per applicable state and/or federal requirements or for three years after completion of the project, whichever is greater.
 - a. If a project can provide evidence for any of the following conditions prior to May 14, 2022, it would qualify under this waiver:¹
 - i. Submitted preliminary engineering report, or equivalent (to the state or to the assistance recipient)
 - ii. Issued a Request for Proposal or execution of a contract for design or engineering services (regardless of funding source)
 - iii. Execution of an assistance agreement – that includes design

¹ For previously planned water infrastructure projects subject to SRF requirements also pursuing a waiver of iron and steel products under BABA, the project may qualify based on the conditions listed herein provided the project was not already subject to the American Iron and Steel requirements and with the exception of conditions 1(ii), 1(vii), and 1(viii), provided that the documentation demonstrates commencement of the project prior to May 14, 2022. All inquiries regarding iron and steel product concerns should be addressed to SRF_AIS@epa.gov. In addition, the data information outlined in section (3) should also include the Grant Number corresponding to the Community Grants Data System or other relevant data system.

UNDERSTANDING THE DETAILS: AMENDED SRF DESIGN PLANNING WAIVER (CONT'D)

Scenario #2:

- You receive an email from a recipient for a project you oversee, asking if they can use the amended SRF Design Planning Waiver. The details in the email include:
 - The project became a community grants project in March 2022.
 - A public meeting was held to discuss the potential project in March 2022.

What are your next steps?

UNDERSTANDING THE DETAILS: AMENDED SRF DESIGN PLANNING WAIVER (CONT'D)

Scenario #2 Next Steps:

- ✓ Were funds appropriated in FY22 or F23?
- ✓ YES! Funds were appropriated in FY22, so the project meets the base eligibility for the waiver.
- ✓ Review the milestones in the waiver. The seventh milestone may apply because a public meeting was held regarding proposed project prior to the effective date of BABA.
- ✓ Follow up to determine the scope of the public meeting. Was the actual engineering design discussed? Were public comments solicited?
 - ✓ When evaluating applicability of the waiver based on a public meeting, we're looking for these details. A quick discussion about an issue or brainstorming project ideas, without specifics, does not make the project eligible for the waiver.
- ✓ If the project meets the criteria in the waiver, document use of the waiver in the project's file
- ✓ Note: AIS requirements cannot be waived under this milestone. See footnote on slide 19.

UNDERSTANDING THE DETAILS: AMENDED SRF DESIGN PLANNING WAIVER (CONT'D)

Scenario #3:

- You receive an email from a project you oversee asking if they can use the amended SRF Design Planning Waiver. In its email, the project indicates it began design planning in December 2022. Based on your knowledge of the project, you know it is being funded with FY23 appropriations.

What are your next steps?

UNDERSTANDING THE DETAILS: AMENDED SRF DESIGN PLANNING WAIVER (CONT'D)

Scenario #3 Next Steps:

- ✓ Were funds appropriated in FY22 or F23?
 - ✓ YES! Funds were appropriated in FY23, so it meets the base eligibility for the waiver.
- ✓ Review the design planning activities described by the recipient. If the recipient did not complete any of the eight design planning milestones described in the waiver prior to the effective date of BABA, the project is not eligible to use the waiver.

AMENDED SRF DESIGN PLANNING WAIVER: IMPLEMENTATION

Demonstrate - Review - Evaluate - Document



Recipients: demonstrate with evidentiary documentation.



State SRF or EPA Project Officer: review documentation, evaluate whether projects seeking a waiver meet at least one of the eight criteria milestones.



State SRF or EPA Project Officer: use Eligibility Form to document assessment.



State SRF or EPA Project Officer: maintain documentary evidence in the grant project file.

Note: If a project cannot provide documentation but is significantly far enough along in the planning process that complying with BABA would be a detriment to the project proceeding, the project may still qualify for the waiver. Coordinate consultation with EPA HQ for evaluation of the status of the project.

AGENDA

- Waiver Principles
- Available General Applicability BABA Waivers
- **Understanding the Details**
 - ✓ Amended SRF Design Planning Waiver
 - ✓ **De Minimis**
 - ✓ Small Award
 - ✓ EV Charger Waiver
 - ✓ AMI Water Meter Waiver
 - ✓ Minor Components
- Product/Project-Specific Waivers and Waiver Processing
- The Future of BABA Waivers
- Resources

UNDERSTANDING THE DETAILS: DE MINIMIS WAIVER



- All projects may use 5% non-domestic products
- Percentage is based on the total project cost
- Documentation is essential

BABA De Minimis List Example

Total Project Cost: \$1,000,000

5% Project Cost Limit (Max. De Minimis Allowed): \$50,000

<u>Item #</u>	<u>Description</u>	<u>Quantity</u>	<u>\$/Unit</u>	<u>Total Cost</u>
1	4" PVC drain pipe	50 LF	\$10	\$500
2	Brass pressure relief valve	3	\$50	\$150
3	Electrical actuator/valve assembly	1	\$3,000	\$3,000
4	6-ft chain link fence w/gate framework and gates	1	\$7,500	\$7,500
5	5 x 2 precast boxed culvert	40 LF	\$500	\$20,000
6	Filter fabric	900 SQ YD	\$5	\$4,500
			Total:	\$35,650

***Note: This list and the items on it are only examples. There is no required format for recipients to follow when documenting their de minimis products list.**

AGENDA

- Waiver Principles
- Available General Applicability BABA Waivers
- **Understanding the Details**
 - ✓ Amended SRF Design Planning Waiver
 - ✓ De Minimis
 - ✓ **Small Award**
 - ✓ EV Charger Waiver
 - ✓ AMI Water Meter Waiver
 - ✓ Minor Components
- Product/Project-Specific Waivers and Waiver Processing
- The Future of BABA Waivers
- Resources

UNDERSTANDING THE DETAILS: SMALL PROJECT WAIVER

- Projects with assistance agreements or subawards under assistance agreements that are less than \$250K are eligible to use the waiver
 - For non-SRF programs, subawards can differ between states/programs. Consult with your program expertise to determine if a “project” may qualify for the waiver.
- Threshold is based on EPA-funded portion of the project, not all federal funding

AGENDA

- Waiver Principles
- Available General Applicability BABA Waivers
- **Understanding the Details**
 - ✓ Amended SRF Design Planning Waiver
 - ✓ De Minimis
 - ✓ Small Award
 - ✓ **EV Charger Waiver**
 - ✓ AMI Waiver Meter Waiver
 - ✓ Minor Components
- Product/Project-Specific Waivers and Waiver Processing
- The Future of BABA Waivers
- Resources

UNDERSTANDING THE DETAILS: EV CHARGER WAIVER

- Phased approach; expires July 1, 2024
- Iron and steel housing must be produced in the US during all phases

Phase 1:

- Effective immediately, final assembly of electric vehicle chargers must occur domestically
- Applies to EV chargers manufactured on or before June 30, 2024; expenditure made on or after effective date of waiver, and recipients begin installation by October 1, 2024.

Phase 2 (waiver expiration):

- Applies to EV chargers manufactured on or after July 1, 2024; Cost of components manufactured in the US is at least 55% of total cost of all components.
- Iron and steel housing (cabinet/enclosure) for EV charger can be included when determining 55% total cost of components.

UNDERSTANDING THE DETAILS: EV CHARGER WAIVER (CONT'D)

Important definitions and notes from the waiver:

- “*EV Charger*” is only the electric vehicle charger unit itself and the equipment contained inside it (does not include housing)
- “*Component*” is any article, material, or supply that is directly incorporated into the final product, i.e., the electric vehicle charger.
- “*Date of manufacture*” is the date of final assembly of EV charger and when it becomes operational; This will determine the phase of the waiver the charger falls under.

AGENDA

- Waiver Principles
- Available General Applicability BABA Waivers
- **Understanding the Details**
 - ✓ Amended SRF Design Planning Waiver
 - ✓ De Minimis
 - ✓ Small Award
 - ✓ EV Charger Waiver
 - ✓ **AMI Water Meter Waiver**
 - ✓ Minor Components
- Product/Project-Specific Waivers and Waiver Processing
- The Future of BABA Waivers
- Resources

UNDERSTANDING THE DETAILS: AMI WATER METER WAIVER

- Phased approach; expires December 19, 2027
- AMI water meters are composed of meter housings, end points/transmitters, printed circuit boards, meter electronics, batteries, base stations, repeaters and associated equipment.

Phase 1:

- Length: Two (2) years
- From the date of approval, purchases of AMI meters and all components (the entire “manufactured product”) are waived.

Phase 2 (waiver expiration):

- Length: One (1) year
- Two (2) years from the date of approval, AMI meter housings shall be domestically manufactured or produced components and will be excluded from the waiver scope.

AGENDA

- Waiver Principles
- Available General Applicability BABA Waivers
- **Understanding the Details**
 - ✓ Amended SRF Design Planning Waiver
 - ✓ De Minimis
 - ✓ Small Award
 - ✓ EV Charger Waiver
 - ✓ AMI Water Meter Waiver
 - ✓ **Minor Components**
- Product/Project-Specific Waivers and Waiver Processing
- The Future of BABA Waivers
- Resources

UNDERSTANDING THE DETAILS: MINOR COMPONENTS WAIVER



- Identical to the AIS Minor Components Waiver
- Allows the manufacturer to include non-domestic, minor iron/steel components in BABA-compliant iron and steel products (up to 5% of material cost of the product)
- *Example:* a valve manufacturer that uses stainless steel pins and springs of unknown or nondomestic origin, up to 5% of the material cost of the valve, could make use of the waiver.

AGENDA

- Waiver Principles
- Available General Applicability BABA Waivers
- Understanding the Details
 - ✓ Amended SRF Design Planning Waiver
 - ✓ De Minimis
 - ✓ Small Award
 - ✓ EV Charger Waiver
 - ✓ AMI Water Meter Waiver
 - ✓ Minor Components
- **Product/Project-Specific Waivers and Waiver Processing**
- The Future of BABA Waivers
- Resources

UNDERSTANDING THE DETAILS: PRODUCT/PROJECT-SPECIFIC WAIVERS

Just like in AIS:

- **Nonavailability Waiver**
 - Available when a product(s) is not available or will not be available in sufficient and reasonably available quantities and of a satisfactory quality
- **Public Interest Waiver**
 - BABA implementation is not in the public interest
 - High Bar; evaluation can be complicated, longer decision time
- **Unreasonable Cost Waiver**
 - Available when BABA application increases the total project cost more than 25%

UNDERSTANDING THE DETAILS: PRODUCT/PROJECT-SPECIFIC WAIVERS

- Information needed to process a BABA waiver is similar to AIS.
- EPA OW's [checklist](#) for an AIS waiver request is a good starting point. A similar, BABA-specific checklist will be available soon.

Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
<p>General</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> – Description of the foreign and domestic construction materials – Unit of measure – Quantity – Price – Time of delivery or availability – Location of the construction project – Name and address of the proposed supplier – A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the instructions in the memorandum • Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor 		
<p>Availability Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: <ul style="list-style-type: none"> – Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials – Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. – Project schedule – Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought • Has the State received other waiver requests for the materials described in this waiver request, for comparable projects? 		

UNDERSTANDING THE DETAILS: PRODUCT/PROJECT-SPECIFIC WAIVERS

Just like AIS, nonavailability waiver requests should include the following information:

- ✓ Description of foreign and domestic materials and identification of BABA category
- ✓ Unit of measure
- ✓ Quantity
- ✓ Price
- ✓ Time of delivery or availability
- ✓ Project schedule
- ✓ Location of the project
- ✓ Name and address of the proposed supplier
- ✓ Detailed justification for the use of foreign construction materials
- ✓ Documented due diligence
- ✓ Relevant technical specifications
- ✓ Comparable past approved waivers

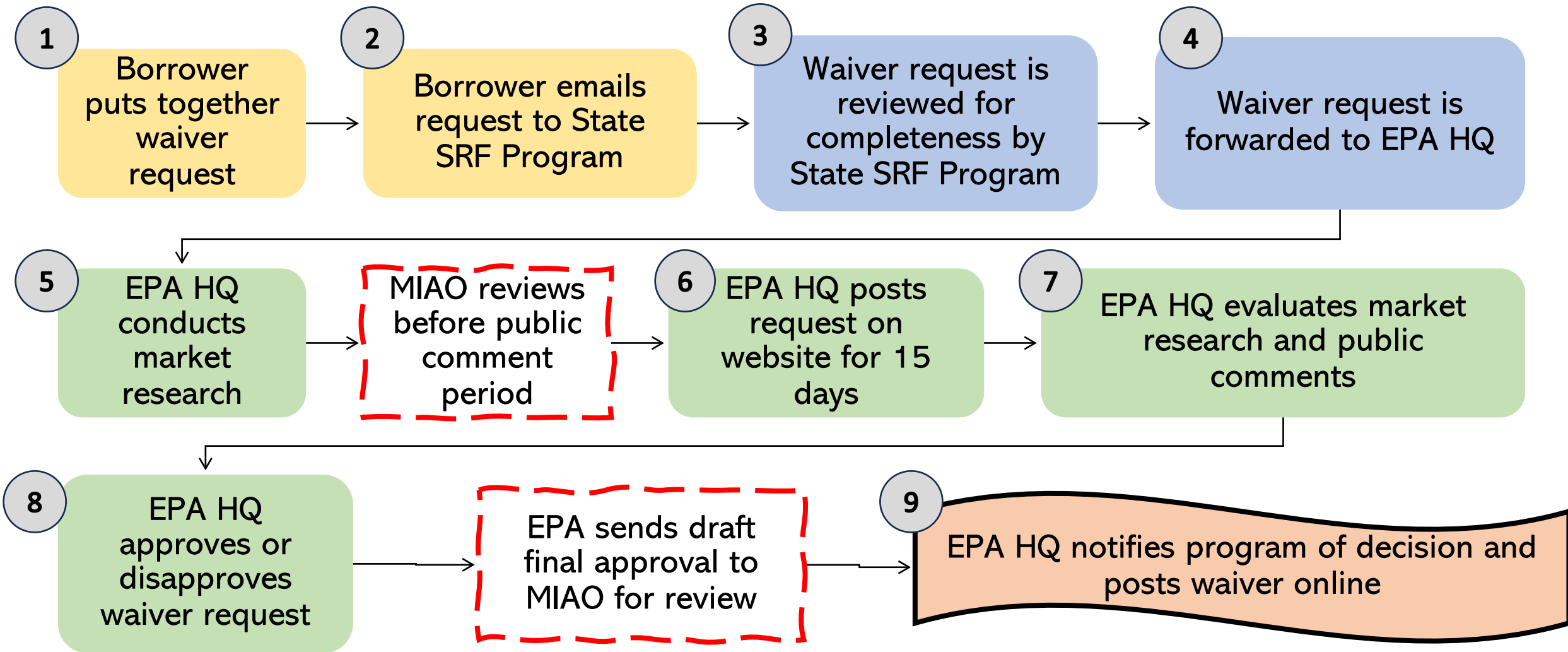
UNDERSTANDING THE DETAILS:

PRODUCT/PROJECT-SPECIFIC WAIVERS

Additionally, MIAO requests the following project information to be included in waivers if available.

- ✓ Recipient Name and/or Unique Entity Identifier (UEI), if available
- ✓ Federal Financial Assistance Identification Number (FAIN), if available
- ✓ Federal Financial Assistance Listing Name (ex: Congressionally Mandated Projects), if available
- ✓ Federal Financial Assistance Listing Number, if available
- ✓ Federal Financial Assistance Funding Amount
- ✓ Total Cost of Infrastructure Expenditures
- ✓ Federal Financial Assistance funding amount and total estimated infrastructure funding amount
 - ✓ If different, identify the specific or estimated amount expected to be waived.

NEW STEPS IN WAIVER PROCESSING THROUGH MADE IN AMERICA OFFICE (MIAO)



AGENDA

- Waiver Principles
- Available General Applicability BABA Waivers
- Understanding the Details
 - ✓ Amended SRF Design Planning Waiver
 - ✓ De Minimis
 - ✓ Small Award
 - ✓ EV Charger Waiver
 - ✓ AMI Water Meter Waiver
 - ✓ Minor Components
- Product/Project-Specific Waivers and Waiver Processing
- **The Future of BABA Waivers**
- Resources

THE FUTURE OF BABA WAIVERS

- Short-term product-specific waivers (Nonavailability)
 - Time-limited, targeted, conditional – required by guidance/OMB
 - General waivers for products not currently manufactured in U.S.
 - EPA Initiating research for many complex manufactured products

RESOURCES

- [Approved EPA BABA Waivers](#)

A close-up photograph of water flowing from a heavily rusted metal pipe. The water is clear and turbulent as it falls. The pipe has two circular holes on either side of the opening. The background is blurred.

Questions and Discussion