

## **Recreation Trails Program Update on Waivers**

The Federal Highway Administration published [Waiver of Buy America Requirements for De Minimis Costs and Small Grants](https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants). See <https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants#further-info>.

Please see the Buy America information below and attached. If you have questions (and because I'm just the messenger, not the Buy America expert):

- State Resource Agencies: Please contact your State DOT Buy America contact.
- State DOTs: Please contact your FHWA Division office.
- FHWA Divisions: Please contact the FHWA Buy America Team.

### **I received the following clarifications from the Buy America Team:**

The [Waiver of Buy America Requirements for De Minimis Costs and Small Grants](https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants) notice **is** the waiver. There is no need for waiver applications for projects that meet the criteria of this waiver.

To make clear: If the total amount of the project is below \$500,000, the Buy America requirements for iron, steel, manufactured product, and construction materials is waived. If the total amount of the project is over \$500,000, the allowable threshold for noncompliant products is the lesser of \$1,000,000 or 5% of total applicable costs for the project. However, if the noncompliant products include iron, steel, manufactured products, the FHWA's threshold amount of 0.1% of the total contract amount or \$2,500 applies.

Do manufactured products made of iron or steel (such as snow grooming or trail construction and maintenance equipment) still need to go through the waiver process at <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm>?

Re: If the total amount of the grooming or trail construction and maintenance equipment project is below \$500,000, the answer is NO. If the amount is over \$500,000, the answer is YES.

### **Finding on the Waiver (excerpt from the text, but see the [Notice](#) for full context)**

Based on all the information available to the Agency, DOT finds that it is in the public interest to issue a waiver of BABA's domestic preferences for iron and steel, manufactured products, and construction materials used in projects funded under DOT-administered financial assistance programs for iron, steel, manufactured products, and construction materials under a single financial assistance award for which:

- The total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project; or
- The total amount of Federal financial assistance applied to the project, through awards or subawards, is below \$500,000.

The waiver is applicable only to awards that are obligated or subawards that are made on or after the effective date of the waiver [August 16, 2023]. The waiver is applicable to subawards only if the subawards are made by a pass-through entity for a specific project.

In applying the waiver, the "total value of the non-compliant products" does not include the value of those products subject to a separate Buy America waiver. "Total applicable project costs" are

defined as the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement, including materials that are within the scope of an existing waiver.

Because many DOT-administered financial assistance programs are also subject to program-specific domestic preference requirements, the waiver also applies to those requirements. Specifically, the waiver is also an exercise of DOT's authority to issue public interest waivers under [23 U.S.C. 313\(b\)\(1\)](#), [49 U.S.C. 5323\(j\)](#), [46 U.S.C. 54101\(d\)\(2\)\(B\)\(i\)\(I\)](#), [49 U.S.C. 22905\(a\)\(2\)](#), [49 U.S.C. 50101\(b\)\(1\)](#), and [41 U.S.C. 8301\(a\)\(2\)](#), as applied to DOT financial assistance. However, the de minimis cost portion of the waiver ( *i.e.*, the first bullet in the finding above) does not apply to iron and steel subject to the requirements of [23 U.S.C. 313](#) on financial assistance administered by FHWA.<sup>[6 7]</sup>

*[TEXT CONTINUES, see full text*

*at <https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants#further-info> for context.]*

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