

# Q&As for the Waiver of Buy America Requirements for De Minimis Costs and Small Grants on or After October 1, 2025

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The United States Department of Transportation (USDOT) Waiver of Buy America Requirements for De Minimis Costs and Small Grants can be found here: <https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants>.

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## **1. Does the USDOT De Minimis Costs and Small Grants Waiver apply to FHWA-funded projects?**

Yes. The USDOT De Minimis Costs Waiver applies to manufactured products and construction materials. In particular, this waiver allows the use of non-compliant products (manufactured products and construction materials) when the total value of such non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project.

The FHWA's de minimis standard at 23 CFR 635.410(b)(4) continues to apply to steel and iron products. This includes the steel and iron included in precast concrete products and the cabinets and enclosures comprised of steel and iron for ITS products and other electronic hardware systems installed in the highway right-of-way.

The small grants portion waives the application of FHWA's Buy America requirements for steel, iron, and manufactured products and BABA's requirements for construction materials under a single financial assistance award when the total amount of Federal financial assistance applied to the project, through awards or subawards, is less than \$500,000.

The De Minimis Costs and Small Grants Waiver is applicable only to awards that are obligated or subawards that are made on or after August 16, 2023.

## **2. For the USDOT's De Minimis Costs portion, what is the "total value of the non-compliant product"?**

The total value of non-compliant products is the value of all manufactured products that are not compliant with FHWA's Buy America requirements and construction materials that are not BABA-compliant that are permanently incorporated into an FHWA-funded project.

For manufactured products, non-compliance is determined based on the requirements applicable to the project at the time FHWA funding is obligated. For instance, for projects obligated on after October 1, 2025, and before October 1, 2026, a non-compliant manufactured product is one that is not manufactured in the United States. For products obligated on or after October 1, 2026, a non-compliant manufactured product is one that is not manufactured in the United States or one that does not have 55 percent of its components, by cost, produced in the United States.

### **3. For the USDOT's De Minimis Costs portion, what are the "total applicable project costs"?**

The total applicable project costs include the costs of all steel, iron, manufactured products, and construction materials used in the FHWA-funded project.

Cement and cementitious materials; aggregates such as stone, sand, or gravel; and binding agents or additives (known as Section 70917(c) materials in 2 CFR 184.3), standing alone, should not be included in the determination of total applicable project costs. These Section 70917(c) materials, however, may be included as components of manufactured products, in which case the cost of the manufactured product, including the cost of the Section 70917(c) components, should be included in the determination of total applicable project costs.

### **4. How do I calculate the de minimis threshold under the USDOT's De Minimis portion? How do change orders affect the calculation?**

For a single financial award, the threshold amount is the lesser of \$1,000,000 or 5% of total applicable costs for the project. The 5% threshold is based on the following formula: (total value of non-compliant manufactured products and construction materials used in the project) / (total applicable project costs (steel, iron, manufactured products, and construction materials)). This threshold is based on the actual cost of the steel, iron, manufactured products, and construction materials, not just the anticipated cost of those materials. Therefore, administering agencies should track the 5% threshold amount to ensure that the threshold is not exceeded. If the threshold amount increases more than the lesser of 5% or \$1,000,000 because of a change order, the administering agency must request and receive a waiver for all non-compliant construction materials incorporated into the project (2 CFR 184; 23 CFR 635.410; 88 FR 55817 (Aug. 16, 2023)).

Similarly, please note that administering agencies should also track the change in total projects costs, including change orders, with respect to the FHWA's de minimis standard at 23 CFR 635.410(b)(4) to ensure compliance with the de minimis threshold for steel and iron products.

### **5. How do I apply the \$500,000 small grants threshold? Do I use the engineer's estimate amount, contract award amount, or final project amount which may include change orders?**

The \$500,000 small grants threshold applies to the total amount of Federal financial assistance provided for the project through awards or subawards, not just the total amount of a single award, project contract award amount, or engineer's estimate. For example, if the total amount of the Federal financial assistance is 90% of the project costs, then, 90% of the total cost of the project must be below \$500,000 for the waiver to apply (88 FR 55817 (Aug. 16, 2023)).

### **6. How do you apply the \$500,000 small grants threshold on multiple Federal financial assistance awards?**

The small grant threshold applies to the total amount of Federal financial assistance provided for a project, not just the total amount of a single award.

If the project is completed in phases using multiple awards, the value of the awards must be aggregated to determine whether the small grants portion of the waiver would apply (88 FR 55817 (Aug. 16, 2023)).

**7. How does the small grants waiver affect programs like the Recreational Trails Program, Transportation Enhancement activities, Congestion Mitigation and Air Quality Improvement projects, Bicycle programs, etc. where there are awards and subawards?**

The total dollar amount of Federal financial assistance for the grant awards or subawards must be below \$500,000 for the small grants portion of the waiver to apply (88 Fr 55817 (Aug. 16, 2023)). It is important to note that the de minimis and small grants waivers are only applicable to subawards if the subawards are made by a pass-through entity for a specific project.

**8. Should States now keep track of iron and steel separately from construction materials for the de minimis portion of waiver because FHWA's de minimis provision for foreign iron and steel (0.1% of the total contract cost or \$2,500, whichever is greater) applies to iron and steel and the 5% de minimis provision of the USDOT waiver applies only to construction materials?**

Yes.