NHTSA
Regional Operations and Program Delivery
Grant Management and Oversight Guidance

Guidance	Buy America Act Procedure for Highway Safety Grant Programs
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Associate Administrator, Regional Operations and Program Delivery

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Citation: PUBLIC LAW 112-141/MAP-21 requires that States comply with the Buy America Act, 23 U.S.C., § 313 as part of Appendix A to Part 1200 Certification and Assurances for Highway Safety Grants (23 U.S.C Chapter 4).

Guidance:

The Buy America Act, 23 U.S.C. § 313, prohibits States from using highway grant funds under 23 U.S.C. Chapter 4 to purchase products, unless they are produced in the United States. This prohibition applies to steel, iron and **all** manufactured products, unless the Secretary of Transportation has determined that it is appropriate to waive the Buy America Act requirement. There is no minimum purchase threshold that exempts the need for a waiver.

The Secretary of Transportation may waive the Buy America Act requirement if: 1) the requirements would be inconsistent with the public interest (public interest waiver); 2) the products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality (non-availability waiver); and 3) use of products produced in the United States would increase the overall cost of a project by more than 25 percent (cost waiver). States may request a waiver of the Buy America Act requirements for purchases made with funds provided through grants under 23 U.S.C. §§ 402 and 405, provided they satisfy one of the above conditions. NHTSA's process for reviewing Buy America waivers is detailed below.

1) NHTSA's regional office will review the State's waiver request to ensure that it meets the minimum specificity needed to make a determination. The State's Highway Safety Office must submit a written waiver request to the applicable NHTSA Regional Administrator (RA) that includes a detailed justification for the purchase of non-domestic items. For minimum specificity, the State must provide the following details:

A) Identification of the specific item the State seeks to purchase;
B) A detailed justification that the use of the funds is warranted under the specific grant program;
C) A statement that the State seeks a non-availability or cost waiver; and

D) Supporting information that details the State's steps to determine the availability of the item in the United States or that the overall costs would increase by more than 25 percent.

If the State's waiver request fails to meet this minimum level of specificity, the regional office will return it to the State without further review with an explanation of the omitted minimum requirements.

2) If the RA determines that the waiver request meets minimum specificity, the RA will review it to determine whether the use of the funds is warranted under the specific grant program. If the RA determines that the use of funds is not warranted, he or she will provide a written basis for the denial and return the waiver request to the State without further review.

3) If the RA agrees that the use of the funds is warranted under the specific grant program, the RA will forward the waiver request and his or her written concurrence detailing that the waiver meets minimum specificity to NHTSA's Office of Grants Management and Operations (GMO). The GMO will review the state's waiver request to ensure that the minimum level of specificity has been met. If the materials meet minimum specificity, the GMO will forward the State's waiver materials and RA's written concurrence to NHTSA's Office of Chief Counsel (NCC) for review.

4) NCC will review the waiver request and the State's supporting materials to determine if a waiver is appropriate under the Buy America Act. NCC may review information from additional sources to assist its determination.

5) NCC's determination will be published in the Federal Register and seek public comment. If the waiver is granted, the Federal Register notice will specify the effective date, term and scope of the waiver. NHTSA will review and consider all comments received during the comment period, but its determination will continue to apply, unless changed by subsequent action. Comments received may influence NHTSA's decision to terminate or modify a grant or denial of the waiver. For any termination or modification of the waiver determination, NHTSA will publish an additional notice in the Federal Register.

6) The RA will provide a copy of all Federal Register notices to the State's Highway Safety Office.

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