



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA – 2016-0010]

Notice of Buy America Waiver

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Buy America Waiver.

SUMMARY: This notice provides NHTSA's finding with respect to a request from the Michigan Office of Highway Safety Planning (OHSP) to waive the requirements of Buy America. NHTSA finds that a non-availability waiver is appropriate for OHSP to purchase twenty foreign-made motorcycles using Federal grant funds because there are no suitable motorcycles produced in the United States for motorcyclist safety training purposes.

DATES: The effective date of this waiver is [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted using any one of the following methods:

- **Mail:** Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.
- **Fax:** Written comments may be faxed to (202) 493-2251.
- **Internet:** To submit comments electronically, go to the Federal regulations website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may also call the Docket at 202-366-9324.

FOR FURTHER INFORMATION CONTACT:

For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202-366-0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202-366-5263). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

This notice provides NHTSA's finding that a waiver of the Buy America requirements, 23 U.S.C. § 313, is appropriate for Michigan's OHSP to purchase twenty motorcycles for motorcyclist safety training using grant funds authorized under 23 U.S.C. §§ 402 and 405(f). Section 402 funds are available for use by state highway safety programs that, among other things, reduce or prevent injuries and deaths resulting from speeding motor vehicles, driving while impaired by alcohol and or drugs, motorcycle accidents, school bus accidents, and unsafe driving behavior. 23 U.S.C. § 402(a). Section 405(f) funds are available for use by state highway safety programs to implement effective programs to reduce the number of single and

multi-vehicle crashes involving motorcyclists that, among other things, include supporting training of motorcyclists and the purchase of motorcycles. 23 U.S.C. §§ 405(f)(1) & (4).

Buy America provides that NHTSA “shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.” 23 U.S.C. § 313. However, NHTSA may waive those requirements if: “(1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.” 23 U.S.C. § 313(b); 49 C.F.R. § 1.95(f).

Recently, NHTSA published its finding that that a public interest waiver of the Buy America requirements is appropriate for a manufactured product whose purchase price is \$5,000 or less, excluding a motor vehicle, when such product is purchased using Federal grant funds administered under Chapter 4 of Title 23 of the United States Code. *See* 80 FR 37359 (June 30, 2015). Under this public interest waiver, therefore, states are no longer required to submit a waiver of Buy America to NHTSA for items costing \$5,000 or less, except for motor vehicles, when they purchase the item with Federal grant funds.

Michigan’s OHSP seeks both a non-availability waiver—that the product is not produced in the United States in sufficient quantities—and a cost waiver—that the purchase of comparable domestic made motorcycles are 25 percent greater than the cost of foreign made motorcycles—to purchase twenty motorcycles for motorcyclist training purposes. It seeks to purchase a combination of the following make, model and model year motorcycles and unit price: 2016

Suzuki TU250X (\$4,399); 2015 Yamaha V-Star 250 (\$4,340); 2016 Yamaha TW200 (\$4,590); 2015 Honda Grom (\$3,199); and 2016 Honda Rebel 250 (\$4,190). Michigan asserts that a diverse training motorcycle fleet makes it easier to match novice riders to training motorcycles they can ride safely and comfortably during the training sessions. It notes that the Motorcycle Safety Foundation's (MSF) level one classroom curriculum includes a discussion of motorcycle types and styles, and how to choose a motorcycle that matches a rider's body type and riding experience. Michigan adds that the two outdoor sessions of its training program are 5 hours each, which is long enough that the student's comfort on the motorcycle becomes a significant aspect of their training experience. The total purchase price for all twenty motorcycles ranges from \$63,980 - \$91,800. This training program is designed to improve traffic safety by assuring that individuals seeking to obtain a Michigan motorcycle operator's license are properly trained in basic motorcycle operation and safety.

OHSP requires that its training motorcycles meet certain specifications. The engine displacement must be no more than 250 cubic centimeters (CC). Michigan, however, is unable to identify any motorcycles with this specification that meet the Buy America requirements. OHSP researched motorcycle models made by several American motorcycle manufacturers: Harley-Davidson, Inc., Victory Motorcycles, Indian Motorcycles, ATK Motorcycles and Cleveland CycleWerks. Harley-Davidson produces a 500 CC motorcycle called the Street 500, with a MSRP of \$6,849. Victory Motorcycles and Indian Motorcycles produce motorcycles with a much heavier and larger engine displacement than 500 CC, with the lowest MSRP of \$12,499 for the Victory Vegas 8-ball motorcycle and the lowest MSRP of \$10,999 for the Indian Scout. OHSP reached out to ATK Motorcycles, a domestic manufacturer located in Utah, and determined that ATK Motorcycles are not currently produced or available for sale. OHSP also

found that Cleveland CycleWerks manufactures motorcycles in China, with minimal assemblage in the United States.

Michigan states that its fleet of training motorcycles consists of motorcycles with less than 500 CC engine displacement and states that its practice is to use motorcycles with 250 CC engine displacement or less to enhance safety and minimize risk to participants of the training course. OHSP was unable to find a motorcycle that meets its requirements for training motorcycles that also meets the Buy America requirements. OHSP seeks to use the aforementioned motorcycles for its 2016 motorcycle safety training program because they are smaller motorcycles with smaller engine displacement (250 CC). These motorcycles have universal applicability to all rider characteristics. For example, tall and short individuals can train with these smaller motorcycles; whereas, shorter individuals would have difficulty riding taller motorcycles, which, in general, have larger engine displacement. Moreover, motorcycles with smaller engine displacement are lighter and have less engine power that permit novice riders, or those with smaller physical stature, the ability to maneuver the motorcycles with limited risk of the motorcycle overpowering the riders causing injury. While some larger motorcycles (500 CC) are suitable for some motorcycle riders to train on, these motorcycles may overwhelm novice riders with their engine power and weight. Motorcycles with larger engine displacements do not have the universal applicability of the 250 CC motorcycles and would limit the effectiveness of Michigan's training courses. The smaller motorcycles will enable Michigan to continue to have effective motorcycle safety training courses that further the goal of section 402 and 405 to reduce motorcycle crashes and develop effective motorcyclist training for all its constituents.

NHTSA is unaware of any other domestic motorcycle manufacturers than Harley-Davidson, Victory, and Indian. As these manufacturers do not sell a motorcycle that meets the requirements for Michigan's motorcycle safety training purposes, a Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. § 313(b)(3), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to Michigan to purchase twenty motorcycles for training purposes. Michigan seeks both a non-availability waiver—where the product is not produced in the United States in sufficient quantities—and a cost basis waiver—where the purchase of a comparable domestic made motorcycle is 25 percent greater than the cost of foreign a made motorcycle. We have construed this as a non-availability waiver request because a cost basis waiver is not appropriate when there is no comparable domestic product against which to compare the price of the foreign product. Here, no domestic manufacturer produces a motorcycle with 250 CC engine displacement. As smaller engine displacement is common for training purposes and no American manufacturer produces motorcycles with this specification, a non-availability waiver is appropriate.

This waiver applies to Michigan and all other States seeking to use section 402 and 405 funds to purchase the make and model motorcycles above and for the purposes mentioned herein. This waiver will continue through fiscal year 2016 and will allow the purchase of these items as required for Michigan's OHSP and its motorcyclist training programs. Accordingly, this waiver will expire at the conclusion of fiscal year 2016 (September 30, 2016). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat.

1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate for certain Suzuki, Yamaha and Honda motorcycles.

Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider these findings, if through comment, it learns of and can confirm the existence of a comparable domestically made product to the items granted a waiver.

This finding should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

Authority: 23 U.S.C. 313; Pub. L. 110-161.

Issued in Washington, DC on February 22, 2016.

under authority delegated in 49 CFR part 1.95

Paul A. Hemmersbaugh,
Chief Counsel.

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