

HOW TO USE THE AIS DE MINIMIS WAIVER FOR YOUR PROJECT

Before initiating a product-specific waiver request for the WIFIA project, first determine whether the product can be covered by the [AIS De Minimis Waiver](#). The waiver is approved and ready for use on your WIFIA project. There is no need to seek further approval from the WIFIA program for its use.

WHAT IS THE AIS DE MINIMIS WAIVER?

The AIS De Minimis Waiver is a tool to facilitate compliance with the AIS requirement.

All WIFIA projects are subject to AIS, which means products that are (1) primarily iron and steel and (2) permanently incorporated into a project need to be produced in the U.S. The waiver allows for a small portion of these products to be waived from the requirement if the following criteria can be met:

- The product is **incidental** to the project. The waiver was designed to cover miscellaneous, generally low-cost components that serve auxiliary or ancillary functions to the project. This may include small hardware (screws, washers, nuts and bolts) and piping and valves used in fire suppression, air service, or emergency eye wash systems.
- The cost of a single product under the waiver is **less than 1% of the total materials costs**. This includes the costs of all materials used on the project, not just iron and steel materials.
- The waiver is **capped at 5% of the total materials costs** of the WIFIA project for all products that are placed under the waiver.

WHO CAN USE THE WAIVER?

All WIFIA borrowers have access to this waiver and can immediately use it on their WIFIA projects.

It is possible to delegate responsibilities for tracking use of the AIS De Minimis Waiver across multiple parties (e.g., program management team, contractors) that are involved in the construction of the project, but the WIFIA borrower has the primary responsibility to ensure all criteria have been met for the WIFIA project.

The WIFIA borrower (not the general contractor, product manufacturer, or supplier) makes decisions on whether products used for the WIFIA project should be placed under the waiver. WIFIA program staff can provide technical assistance to the borrower when making these decisions.

HOW SHOULD THE WAIVER BE USED?

Incorporate use of the AIS De Minimis Waiver early in project construction to optimize its benefits. This gives borrowers sufficient time to strategize implementation and delineate responsibilities between the borrower, its representatives, and general contractors.

Assessing “Incidental”

- The term “incidental” covers things that are not a major part of something. An AIS-covered product is incidental if it is not integral to the project and its purpose.
- For example, pipes, valves, tanks used to convey, store, or distribute water are generally not incidental. However, pipes and valves for auxiliary systems (e.g., air, cooling water, emergency wash systems) or items not part of the major water infrastructure being built (e.g., fencing, light poles, bollards) are likely candidates for using the waiver.
- If you are in doubt, seek technical assistance from WIFIA program staff.

Meeting the Cost Thresholds

- Knowing the unit costs for items used on the project can help you calculate the total materials cost and check that the cost thresholds in the waiver are being met.
- Leave a bit of capacity in the waiver cost thresholds to use at project close-out. There may be instances where a product is identified without proper AIS documentation, and it cannot be retroactively obtained or verified. Consider placing it on the AIS De Minimis list.

Calculating Total Materials Cost

- The cost threshold for the waiver is based on the total materials costs for the WIFIA project. The total materials cost includes materials that are iron/steel, as well as other materials that may not be covered by the AIS requirement such as concrete, mechanical/electrical components, PVC pipe, brass valves, etc.
- To get a general sense of the utility of the waiver for the WIFIA project and in the absence of other project-specific cost information, the initial estimate of materials costs can be assumed 40-50% of construction costs.
- Note that materials costs can change from this initial estimate. Tracking waiver use will ensure cost thresholds are met, and AIS compliance is upheld for the WIFIA project.

Documenting in the Project File

- WIFIA borrowers should maintain documentation demonstrating compliance with AIS, including how the waiver is used. This documentation should be kept in the project file in case the WIFIA program requests this information.
- General contractors can be delegated to track products on the De Minimis list for their contract, but the WIFIA borrower should approve use of the waiver. If the cost thresholds criteria in the waiver are met for each contract, the WIFIA project should also meet the criteria.
- There is no standard format required for documentation of waiver use, but a simple “De Minimis” list that identifies the items covered by the waiver and that shows checks on the cost thresholds should suffice, like this:

Item/Product	Quantity	Item Price	Item Price <1% of Total Materials Cost	Total Cost
		\$	Yes or No	\$
		\$		\$
		\$		\$
Total Materials Cost (on De Minimis)				\$
Total Materials Cost for Project				\$
Total Materials Cost (on De Minimis) <5% of Total Materials Cost for Project?				Yes or No

- The list can be organized by contractor or project component. It can also be located with an ongoing list of bid items for the project to track total materials cost, like this [example De Minimis List](#). These formats are optional if there is another format that better serves the WIFIA project.