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State Revolving Fund

# Implementation of American Iron and Steel Requirements in State Revolving Fund Programs



*Presented by:*

Office of Wastewater Management &  
Office of Groundwater and Drinking Water

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# Webcast Logistics

- Presentation via PowerPoint:
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- Questions during webcast – submit via the Q&A pod below, questions can be submitted at anytime
- Q&As will be addressed at several points during the Webcast
- Webcast Q&As will be developed as necessary after webcasts are complete
- Both webcasts will provide similar information

# Agenda

- ◉ Background
- ◉ Implementation of the Act
- ◉ Project coverage
- ◉ Covered iron and steel products
- ◉ Waiver process

# Further Information

- EPA's AIS website:  
[http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)
  
- Waiver requests (and comments) email addresses:
  - CWSRF: [cwsrfwaiver@epa.gov](mailto:cwsrfwaiver@epa.gov)
  - DWSRF: [dwsrfwaiver@epa.gov](mailto:dwsrfwaiver@epa.gov)

# Background

- Appropriations Act for 2014 (P.L. 113-76) includes an American Iron and Steel (AIS) requirement for the DWSRF and the CWSRF programs
- Assistance recipients must:
  - Use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works
  - Apply the requirement to projects with an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Fiscal Year 2014.

# Background – Continued

- ⦿ The Act identifies certain circumstances under which EPA may waive the requirement
- ⦿ In addition, the Act exempts projects where engineering plans and specifications were approved by the State prior to January 17, 2014
- ⦿ EPA released an implementation memorandum on March 20, 2014 that establishes the approach to complying with the Act



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# PROJECT COVERAGE



# What Projects Are Covered By AIS?

- ⦿ All treatment works projects funded by a CWSRF assistance agreement
- ⦿ All public water system projects funded by a DWSRF assistance agreement
- ⦿ Covers projects funded from the date of enactment (1/17/14) through the end of Federal Fiscal Year 2014
- ⦿ AIS requirement applies to the entirety of the project, no matter when construction begins or ends
- ⦿ Additionally, the AIS requirement applies to all parts of the project, no matter the source of funding.



# What Projects Are Covered By AIS? (Continued)

- ⦿ Law contains one exclusion
  - Any project, whether a treatment works project or a public water system project, for which engineering plans and specifications were approved by the responsible state agency prior to January 17, 2014, is excluded from the AIS requirements

# What Projects Are Covered By AIS? (Continued)

## ◉ Partially funded projects

- Where the initial assistance agreement included construction, the date of the assistance agreement counts for purposes of the exclusion
- Where the initial assistance agreement was only for planning and design, the date of the assistance agreement will count for purposes of the exclusion only if there is a written commitment or expectation on the part of the assistance recipient to fund the remainder of the project with SRF funds

# What Projects Are Covered By AIS? (Continued)

## ◎ Phased projects

- Phases will be considered a single project if all construction necessary to complete the building or work, regardless of the number of contracts or assistance agreements involved, are closely related in purpose, time and place.
- Where phases are distinct, projects with engineering plans and specifications approval or assistance agreements signed prior to January 17, 2014 would be excluded from AIS requirements while those approved/signed on January 17, 2014, or later would be covered by the AIS requirements.

# What Projects Are Covered By AIS? (Continued)

## ◎ Split funding

- Intentional splitting of SRF projects into separate and smaller contracts or assistance agreements will not avoid AIS coverage on a portion of a larger project
- If there are distinct phases that can be considered different projects, separate contracts or assistance agreement for SRF and State or other funding would carry separate requirements

# What Projects Are Covered By AIS? (Continued)

## ○ Refinancing

- If a project began construction, financed from a non-SRF source, prior to January 17, 2014, but is refinanced through an SRF assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, AIS requirements will apply to all construction that occurs on or after January 17, 2014, through completion of construction, unless, as is likely, engineering plans and specifications were approved by a responsible state agency prior to January 17, 2014.
- There is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to January 17, 2014.

# AIS Requirement Not Applicable

- ⦿ Tribes and territories
- ⦿ DWSRF set aside activities



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# PROJECT COVERAGE QUESTIONS AND ANSWERS





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# COVERED IRON AND STEEL





# What Is An Iron Or Steel Product?

- ◉ Lined or unlined pipes or fittings
- ◉ Manhole Covers
- ◉ Municipal Castings
- ◉ Hydrants
- ◉ Tanks
- ◉ Flanges
- ◉ Pipe clamps and restraints
- ◉ Valves
- ◉ Structural steel
- ◉ Reinforced precast concrete
- ◉ Construction materials

# What Is An Iron Or Steel Product? (Continued)

- ◉ Primarily Iron or Steel
- ◉ Listed products must be made of greater than 50% iron or steel, measured by cost.
- ◉ The cost should be based on the material costs.

# What Is An Iron Or Steel Product? (Continued)

## ○ Example: Fire Hydrant

- The iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting
- The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem, coupling, valve, seals, etc).
  - The assembly of the internal workings into the hydrant body would not be included in this cost calculation.
  - If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required.

# What Is An Iron Or Steel Product? (Continued)

## ⦿ Non-Listed Products

- If a product is not listed in the statute but is composed of more than 50% iron or steel it does not have to be produced in the US

# What Is An Iron Or Steel Product? (Continued)

## ○ What is steel?

- Steel is an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements
- The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels

# What Is An Iron Or Steel Product? (Continued)

- ⦿ Only the listed products made primarily of iron or steel, **permanently incorporated** into the project must be produced in the US.
- ⦿ Example:
  - trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

# What Does “Produced In The United States” Mean?

- ⦿ All manufacturing processes, including application of coatings, must take place in the US, with the exception of metallurgical processes involving refinement of steel additives
- ⦿ All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating must take place in the US
- ⦿ Raw materials, such as iron ore, limestone and iron and steel scrap, do not have to come from the US
- ⦿ Non-iron or steel components of an iron and steel product do not have to come from the US

# International Trade Agreements

- ◉ Assistance recipients must comply with international trade agreements which they are a party to.
- ◉ The vast majority of assistance recipients are not party to any international trade agreements.



# Definitions of Listed Products

## Municipal Castings:

- ⦿ Access Hatches;
- ⦿ Ballast Screen;
- ⦿ Benches (Iron or Steel);
- ⦿ Bollards;
- ⦿ Cast Bases;
- ⦿ Cast Iron Hinged Hatches, Square and Rectangular;
- ⦿ Cast Iron Riser Rings;
- ⦿ Catch Basin Inlet;
- ⦿ Cleanout/Monument Boxes;
- ⦿ Construction Covers and Frames;
- ⦿ Curb and Corner Guards;
- ⦿ Curb Openings;
- ⦿ Detectable Warning Plates;
- ⦿ Downspout Shoes (Boot, Inlet);
- ⦿ Drainage Grates, Frames and Curb Inlets;
- ⦿ Inlets;
- ⦿ Junction Boxes;
- ⦿ Lampposts;
- ⦿ Manhole Covers, Rings and Frames, Risers;
- ⦿ Meter Boxes;
- ⦿ Service Boxes;
- ⦿ Steel Hinged Hatches, Square and Rectangular;
- ⦿ Steel Riser Rings;
- ⦿ Trash receptacles;
- ⦿ Tree Grates;
- ⦿ Tree Guards;
- ⦿ Trench Grates; and
- ⦿ Valve Boxes, Covers and Risers.

# Definitions of Listed Products (Continued)

## ◉ Structural Steel:

- Rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in construction such as ships and buildings
- Such shapes are designated as:
  - Wide-flange shapes, standard I-beams, channels, angles, tees and zees
  - Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

# Definitions of Listed Products (Continued)

- ⦿ Construction Materials:
- ⦿ Articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems

# Definitions of Listed Products (Continued)

## ⦿ Not Construction Materials:

- Mechanical and electrical components, equipment and systems
  - Mechanical equipment is typically that which has motorized parts and/or is powered by a motor
  - Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system

# Definitions of Listed Products (Continued)

- Reinforced precast concrete:
  - While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US
  - The casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin
  - If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US



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# COVERED IRON AND STEEL QUESTIONS AND ANSWERS





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# PRODUCT CERTIFICATION



# Documenting Compliance

## ◎ Step Certification Process

- Ensures that producers adhere to the AIS requirement
  - Assistance recipients can verify that products comply with the AIS requirement
  - Establishes accountability and better enables States to take enforcement actions against violators
  - Creates a paper trail which documents the location of the manufacturing process
  - Each handler (supplier, fabricator, manufacturer, processor, etc) of the iron and steel products certifies that their step in the process was domestically performed
- ◎ Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes occurred in the US





# Sample Certifications (Appendix 5)

The following information is provided as a sample letter of **step** certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. Xxxx
2. Xxxx
3. Xxxx

Such process took place at the following location:

\_\_\_\_\_

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

# Roles and Responsibilities

- ◉ Assistance Recipient – obtains documentation and maintains certifications in project files.
- ◉ State – conducts inspections and examines documentation for incorporated products.
- ◉ Manufacturer – provides product certifications to recipient.



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# PRODUCT CERTIFICATION QUESTIONS AND ANSWERS





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# WAIVER PROCESS



# Waiver Authority

- ◉ The statute permits EPA to issue waivers for a case or category of cases where EPA finds:
  - That applying these requirements would be inconsistent with the public interest
  - OR
  - Iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality
  - OR
  - Inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25%.

# Waiver Process

Borrower feels a waiver is needed and puts together a request

Borrower emails the request to the State SRF program

State SRF reviews request for waiver & determines if all information was provided

State SRF forwards the application to EPA Headquarters

EPA Headquarters posts the request on its website for 15 days

EPA Headquarters evaluates request and public comments

EPA Headquarters will approve or disapprove the request

EPA will notify the State SRF program and post the waiver decision online.

# Waiver Request

1. Assistance recipient may receive a waiver at any point before, during, or after the bid process if 1 of the 3 conditions are met.
2. Proper and sufficient documentation must be provided, see Appendix 1 checklist:

# APPENDIX 1: INFORMATION CHECKLIST FOR WAIVER REQUEST

Items	✓
<p>General</p> <ul style="list-style-type: none"><li>• Waiver request includes the following information:<ul style="list-style-type: none"><li>— Description of the foreign and domestic construction materials</li><li>— Unit of measure</li><li>— Quantity</li><li>— Price</li><li>— Time of delivery or availability</li><li>— Location of the construction project</li><li>— Name and address of the proposed supplier</li><li>— A detailed justification for the use of foreign construction materials</li></ul></li><li>• Waiver request was submitted according to the instructions in the memorandum</li><li>• Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor</li></ul>	
<p>Cost</p> <ul style="list-style-type: none"><li>• Waiver request includes the following information:<ul style="list-style-type: none"><li>— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li><li>— Relevant excerpts from the bid documents used by the contractors to complete the comparison</li><li>— Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers</li></ul></li></ul>	
<p>Availability</p> <ul style="list-style-type: none"><li>• Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested:<ul style="list-style-type: none"><li>— Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials</li><li>— Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers.</li><li>— Project schedule</li><li>— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials</li></ul></li><li>• Waiver request includes a statement from the prime contractor confirming the non-availability of the domestic construction materials for which the waiver is sought</li><li>• Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?</li></ul>	



# Waiver Request (Continued)

- Assistance recipients are strongly encouraged to hold pre-bid conferences with potential bidders. A pre-bid conference can help to:
  - Identify iron and steel products needed to complete the project
  - Identify the need to seek a waiver prior to bid, and can help to inform the recipient on compliance actions.
- To apply for a waiver, the assistance recipient should email the request in the form of a Word document to the State SRF program.

# Waiver Request (Continued)

- ◉ After receiving the request for waiver by email, the State SRF will review the application for the waiver and determine whether the necessary information has been included.
- ◉ It is recommended that the State designate a *single* person for all AIS communications.
- ◉ Once the waiver application is complete, the State designee will forward the application to either:
  - [cwsrfwaiver@epa.gov](mailto:cwsrfwaiver@epa.gov)
  - [dwsrfwaiver@epa.gov](mailto:dwsrfwaiver@epa.gov)

# Waiver Request (Continued)

- ◎ Evaluation by EPA: The 3-Step Process
  1. Posting – Once the application for waiver of AIS requirements has been received, EPA HQ will publish the request on its website for 15 days to receive informal comment.
  2. Evaluation – EPA HQ will then use the following checklist (Appendix 2) to determine whether the application properly documents and justifies the statutory basis for the waiver – *that it is quantitatively and qualitatively sufficient* – and to determine whether or not to grant the waiver:
  3. Signature – Signature of waiver approval by the Administrator or another agency official with delegated authority
- ◎ As soon as the waiver is signed and dated (or denied), EPA will notify the SRF State program, and post the signed waiver (or waiver outcome) on the website.



## APPENDIX 2: HQ REVIEW CHECKLIST FOR WAIVER REQUEST

Review Items	Yes	No	N/A
<b>Cost</b>			
<ul style="list-style-type: none"> <li>• Does the waiver request include the following information?</li> <li>— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li> <li>— Relevant excerpts from the bid documents used by the contractors to complete the comparison</li> <li>— A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market</li> <li>• Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%?</li> </ul>			
<b>Availability</b>			
<ul style="list-style-type: none"> <li>• Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested?</li> <li>— Supplier information or other documentation indicating availability/delivery date for materials</li> <li>— Project schedule</li> <li>— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials</li> <li>• Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers?</li> <li>• Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information)</li> <li>• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include:               <ul style="list-style-type: none"> <li>— Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State</li> <li>— Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States</li> <li>— Correspondence with construction trade associations indicating the non-availability of the materials</li> </ul> </li> <li>• Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits?</li> </ul>			

# Public Interest Waivers

- ⦿ EPA has the authority to issue public interest waivers.
- ⦿ Evaluation of a public interest waiver request may be more complicated than that of other waiver requests so they may take more time than other waiver requests for a decision to be made.

# Public Interest Waivers

## ○ Example:

- Could be issued for a community that has standardized on a particular type or manufacturer of a valve because of its performance to meet their specifications.
- Switching to an alternative valve may require staff to be trained on the new equipment and additional spare parts would need to be purchased and stocked, existing valves may need to be unnecessarily replaced, and portions of the system may need to be redesigned.
- Therefore, requiring the community to install an alternative valve would be inconsistent with public interest.

# National Waivers

- EPA has the authority to issue waivers that are national in scope
- National waivers may be for specific products or in the public's interest
- Two approved national waivers:
  - Waiver for projects where plans and specs were submitted to the State for approval prior to 1/17/14 and approved prior to signing of waiver
  - Waiver for de minimis items – allows a small percentage of incidental products of unknown or non-American origin to be incorporated.



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# WAIVER PROCESS QUESTIONS AND ANSWERS





# Further Information

- EPA's AIS website:
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  - DWSRF: [dwsrfwaiver@epa.gov](mailto:dwsrfwaiver@epa.gov)

# For Questions or Help

You may contact:

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- ◉ Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division
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