



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 7 2017

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Effective Until April 28, 2017. Application of American Iron and Steel Requirements for Drinking Water State Revolving Fund Projects for Fiscal Year 2017.

FROM: Anita Maria Thompkins, Director
Drinking Water Protection Division

A handwritten signature in black ink, which appears to read "Anita Maria Thompkins", is written over the printed name and title of the sender.

TO: Water Management Division Directors
Regions I-X

On December 10, 2016, the President signed Public Law 114-254, the "Further Continuing and Security Assistance Appropriations Act, 2017" (hereinafter referred to as the Continuing Resolution or CR) which provides fiscal year (FY) 2017 appropriations for continuing projects and activities of the Federal Government through April 28, 2017. This law extends funding for the Drinking Water State Revolving Fund for the time period of October 1, 2016 through April 28, 2017, with the same conditions that were made applicable by the language of the FY 2016 appropriation act, including the requirement for the use of American Iron and Steel (AIS) products in projects receiving financial assistance from the DWSRF.

We have received inquiries about the impact of recent legislation on the AIS provisions. On December 16, 2016, the President signed P.L. 114-322, the "Water Infrastructure Improvements for the Nation (WIIN) Act," which also included the DWSRF AIS requirement for FY 2017. However, the AIS language in the WIIN Act included an exemption for projects for which the engineering plans and specifications were approved by the State prior to the date of enactment. This exemption language was not included in the CR or the FY 2016 appropriation. The Government Accountability Office has asserted that continuing resolutions are meant to maintain the status quo. In addition, when two laws potentially conflict, the Supreme Court has strived to harmonize the laws to give maximum effect to both. Lastly, there is a presumption that Congress has not repealed a provision unless an intent to repeal is clear and manifest. Applying those principles here, there is no clear and manifest indication in the WIIN Act that Congress meant to repeal the provisions of the FY 2016 appropriation act (and subsequent CR). By its own terms, the WIIN Act exemption language states that the DWSRF AIS requirement imposed by "this paragraph" (*i.e.*, the Safe Drinking Water Act as amended by the WIIN Act) does not apply in the case of state-approved engineering plans and specifications. That language does not speak to DWSRF AIS requirements imposed by other laws. Therefore, the language of the FY 2016 appropriation act would continue to apply.

Therefore, all assistance agreements starting October 1, 2016 through April 28, 2017 must include the AIS requirement regardless of when the engineering plans and specifications were approved. If there is an additional CR, or if the Environmental Protection Agency (EPA) receives an FY 2017 appropriation,

the EPA will have to review that language to determine what, if any, effect might be given to the WIIN language.

If you have any questions, please contact Kiri Anderer (202-564-3134 or anderer.kirsten@epa.gov).

cc: Ronald Bergman, Associate Director, Drinking Water Protection Division
Felecia Fort, Associate Branch Chief, Infrastructure Branch, Drinking Water Protection Division
Kirsten Anderer, Environmental Engineer, DWSRF
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