

DRAFT DECISION MEMORANDUM

SUBJECT: **DRAFT** National Product Waiver for Minor Components in Iron and Steel Products (with Cost Ceiling) for State Revolving Fund Projects

The U.S. Environmental Protection Agency is hereby granting a national product waiver pursuant to the “American Iron and Steel” provisions of the Clean Water Act and Public Law 113-235, the “Consolidated and Further Continuing Appropriations Act, 2015,” for minor components with a cost ceiling.¹ The waiver permits the use of non-domestically produced minor components in iron and steel products for projects funded by a Clean Water or Drinking Water State Revolving Fund that may otherwise be prohibited absent this waiver. This national product waiver permits the use of minor, miscellaneous components within an otherwise domestically produced iron and steel product up to either 5 percent of the materials cost of the product or 2 percent of the manufactured cost of the product. The waiver is retroactive and also applies to products purchased before the signature date of this waiver.

Coverage: The specific items covered by this waiver include miscellaneous, minor components in iron and steel products as defined in the AIS provisions. Examples of possible miscellaneous, minor components could include: pins and clips; small, hardware store-variety bolts and nuts; small, low-cost washers; steel reinforced rubber gaskets; ring clamps; and low-cost steel gaskets and ringlets. Non-domestically produced miscellaneous, minor components comprising up to either 5 percent of the materials cost or 2 percent of the manufacturing cost of an otherwise domestically produced iron and steel product may be used. Unless subject to a separate waiver, all other iron and steel components in these products must still meet the AIS requirements. In other words, this waiver does not exempt the whole product or any of the primary iron or steel components from having to be domestic. The specific minor components in covered iron and steel products will vary by product and manufacturer, subject to the conditions of this waiver as outlined above. Any project that receives funds from the CWSRF or DWSRF since the enactment of P.L. 113-76, the “Consolidated Appropriations Act, 2014,” is required to comply with the AIS provisions.

Rationale: The AIS provisions require CWSRF and DWSRF assistance recipients to use specific domestic iron and steel products that are produced in the United States if the project is funded through an SRF assistance agreement unless the Agency determines it is necessary to waive this requirement. EPA has authority to issue waivers in accordance with Section 608(c)(1) of the Clean Water Act and the AIS provisions extended by P.L. 113-235, the “Consolidated and Further

¹ Absent a waiver, all treatment works and drinking water facilities that are constructed, in whole or in part, with funds from the CWSRF or the DWSRF, must use American made iron and steel. EPA is allowed under certain circumstances to provide waivers of this requirement.

Continuing Appropriations Act, 2015,” under the authority of Section 424(b)(1). The provision states in part: “[the requirements] shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency...finds that...applying subsection (a) would be inconsistent with the public interest.”

Product manufacturers and suppliers informed EPA of national manufacturing concerns regarding product management, inventory control, and availability, relating to miscellaneous, minor components in AIS-covered iron and steel products. These manufacturers noted concerns about delivery, supply, availability, and quality of minor components. In addition, they identified manufacturing process challenges relating to inventory tracking and control, excessively burdensome special orders, complex product redundancies, and quality control concerns with the management of a high volume of minor parts and components.

In addition, the product manufacturers and suppliers identified significant compliance challenges. The manufacturers stated that the origin of a significant proportion of very small minor components cannot be reliably tracked or even discerned, and provided examples of product lines that would need duplicative inventories of extremely low-cost, miscellaneous, minor components in order to supply AIS compliant products. They expressed their concerns and views that the management and availability of miscellaneous, minor components was acting to discourage and prevent their participation in the supply market for projects that have to comply with the AIS requirement, thereby potentially affecting the domestic availability of products nationally.

EPA concludes that requiring manufacturers to overcome the claimed challenges outlined above would be inconsistent with the public interest. In order to balance the reliability, availability, and maximum supply of domestically produced iron and steel products for SRF projects, a relatively small proportion (measured by a percentage of the cost as noted above) of miscellaneous, minor components of non-domestic or unknown origin parts incorporated within an otherwise domestically manufactured product is acceptable and in the public’s interest.

Public Comments: EPA is requesting public comment on this **draft** waiver for 15 days. Please submit comments to SRF_AIS@epa.gov and reference the “Minor Components” waiver in the subject line.

Legal Authority: Legal authority for the AIS requirements for CWSRF projects is included under Sec. 608(c)(1) of the Clean Water Act and previously under P.L. 113-76, “Consolidated Appropriations Act, 2014,” under the authority of Section 436(b)(1). Legal authority for the AIS requirements for DWSRF projects is included under P.L. 113-235, the “Consolidated and Further Continuing Appropriations Act, 2015”, under the authority of Section 424(b)(1), also previously under P.L. 113-76. This waiver will continue in force for DWSRF projects under any continuing resolutions or statutes that use similar language as Section 424 of the “Consolidated and Further Continuing Appropriations Act, 2015.”

If you have any questions concerning the contents of this memorandum, please contact Timothy Connor, Chemical Engineer, Municipal Support Division, at connor.timothy@epa.gov or (202) 566-1059 or Kiri Anderer, Environmental Engineer, Drinking Water Protection Division, at anderer.kirsten@epa.gov or (202) 564-3134.