

## **IUP 2022**

### **Attachment VII**

**Interim Davis Bacon Guidance (EPA) March 2010 ([https://www.epa.gov/drinking water srf/interim-davis-bacon-act-guidance](https://www.epa.gov/drinking-water/srf/interim-davis-bacon-act-guidance));**

**EPA Memoranda of May 20, 2011 (Attachment 8 of the DWSRF Projects Benefit Reporting Data Elements 2012 Procedures) and December 20, 2012);**

**AIS - Memoranda EPA-Washington, DC of May 11, 2018; Nov. 27, 2017;**

**April 7, 2017; February 3, 2016; October 13, 2015; January 15, 2015; March 2014;**

**Questions and Answers (Q&A) Part I -Valves, Hydrants (May 2014);**

**Questions and Answers (Q&A) Part II - Product, Project and Process (Sept. 2014)**

**Questions and Answers (Q&A) Part III -Plans Specifications Dates...March 2015)**

**Memoranda EPA-Washington, DC of March 25, 2019 - Implementation of Drinking Water State Revolving Fund (DWSRF) - Related Safe Drinking Water Act (SDWA) Amendments in America's Water Infrastructure Act (AWIA) of 2018**

## Interim Davis Bacon Act Guidance

**This guidance is intended to supplement Department of Labor (DOL) regulations and the Davis Bacon (DB) Terms and Conditions of EPA assistance agreements. In the event of a conflict between the guidance and DOL regulations or the Terms and Conditions of an EPA assistance agreement, the conflicting provision of the Guidance is not binding on DOL or EPA.**

### I. Introduction

The Davis Bacon Act requires that all contractors and subcontractors performing construction, alteration and repair (including painting and decorating) work under federal or District of Columbia contracts in excess of \$2,000, pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location. Davis Bacon requirements may be extended to federal financial assistance programs by the terms of other statutes (collectively referred to in this guidance as Davis Bacon and Related Acts (DBRA)) establishing or funding the programs. [Compliance Assistance By Law - The Davis-Bacon and Related Acts (DBRA)]. Examples of DBRA at EPA include section 104(g) of CERCLA (Superfund) and Division A, Title XVI, section 1606 of the American Recovery and Reinvestment Act of 2009 (Recovery Act).

EPA assistance agreements subject to DBRA include Terms and Conditions that identify the responsibilities of a recipient for complying with DBRA.

EPA, under regulations in 29 CFR 5.5 [Electronic Code of Federal Regulations:] must ensure that its grant recipients and sub-recipients otherwise subject to the Davis-Bacon provisions must comply with the following:

- A. Insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole, or in part, from federal funds or in accordance with guarantees of a federal agency or financed from funds obtained by pledge of any contract of a federal agency to make a loan, grant or annual contribution, contract clauses pertaining to minimum wages.
  - 1) *Minimum wages.* All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor at the following web site Wage Determinations Online ([www.wdol.gov/dba.aspx](http://www.wdol.gov/dba.aspx)), regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

A "wage determination" is the listing of wage and fringe benefit for each *classification* of laborers and mechanics which the Administrator of the Wage and Hour Division of the U.S. Department of Labor has determined to be prevailing in a given area for a particular type of construction (e.g., building, heavy, highway, or residential).

The wage determination (including any additional classification and wage rates) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

<http://www.dol.gov/esa/whd/regs/compliance/posters/fedprojc.pdf>

2) *Withholding.* In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the regulations, the loan or grant recipient may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3) *Payrolls and basic records.* Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. The contractor shall submit weekly for each week in which any contract work is performed, a copy of all payrolls to the recipient, sponsor, or owner. The required weekly payroll information may be submitted in any form desired. A contractor may use Form WH-347 which is available from the Wage and Hour Division web site at: <http://www.dol.gov/esa/whd/forms/wh347.pdf>

4) *Subcontracts.* The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with the requirements above, the requirements identified in the Davis Bacon Terms and Conditions of the EPA assistance agreement, and the contract clauses in 29 CFR 5.5.

B. Contract Work Hours and Safety Standards Act. In any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act, the following clauses shall apply:

1) *Overtime requirements.* No contractor or subcontractor for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. The overtime rate of time and one half does not apply to fringe payments. For work in excess of forty hours, fringe payments should continue to be paid on a per hour worked basis.

2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (B) (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States government, for liquidated damages.

3) *Withholding for unpaid wages and liquidated damages.* The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) (2) of this section.

4) *Subcontracts.* The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (B) (1) through (4) of this section.

C. In any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract.

D. In any contract subject to the Super Fund Program, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of ten years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. If however, there is litigation, claims, negotiations, audits, cost recovery or other action involving the records, then the contractor or subcontractor must retain the records until the issue related to the records is resolved (which may be longer than ten years).

## II. Applicability to EPA Programs

### A. Brownfields Direct Cleanup and Revolving Loan Fund Grants.

1) *Sites contaminated with hazardous substances.* All construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DBRA.

2) *Sites contaminated with Petroleum.* DBRA prevailing wage requirement apply when the project includes:

- a) Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination;
- b) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above; or
- c) Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

Other cleanup activities at Brownfields sites contaminated by petroleum such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will normally not trigger DBRA requirements. Unique situations at a site (e.g. unusually extensive excavation or construction of permanent facilities to house pumps and treatment equipment) may trigger DBRA requirements.

B. Leaking Underground Storage Tank (LUST) Program Grants to States.

DBRA applies to LUST agreements when construction contracts are issued by states for: a) Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination, b) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or c) Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

DBRA may also apply in unique circumstances such as LUST sites that require unusually extensive excavation or construction of permanent facilities to house pump and treatment equipment to remove groundwater contamination.

- C. DBRA may apply to Superfund Cooperative agreements made to states, political subdivisions, and tribes. Superfund projects may involve construction contracts; work with OGC/ORC to define specific applications.
- D. EPA awards Diesel Emission Reduction Act Grants to eligible entities for projects that may involve construction,

Recipients, sub grantees, and borrowers using DERA funding for the projects listed above must comply with the Davis Bacon prevailing wage requirements. Most other DERA funded activities, such as other retrofit, repower, and replacement projects do not trigger DBA requirements. If the recipient encounters a unique situation at a site that

presents uncertainties regarding DB applicability, the recipient must discuss the situation with EPA before authorizing work on that site.

- E. EPA awards (CWSRF and DWSRF) capitalization grants to states, which provides loans to municipalities and other eligible entities for eligible projects, including wastewater/drinking water infrastructure projects, estuary projects, and non-point source projects. Under the ARRA, states may also provide grants to eligible entities for these purposes.

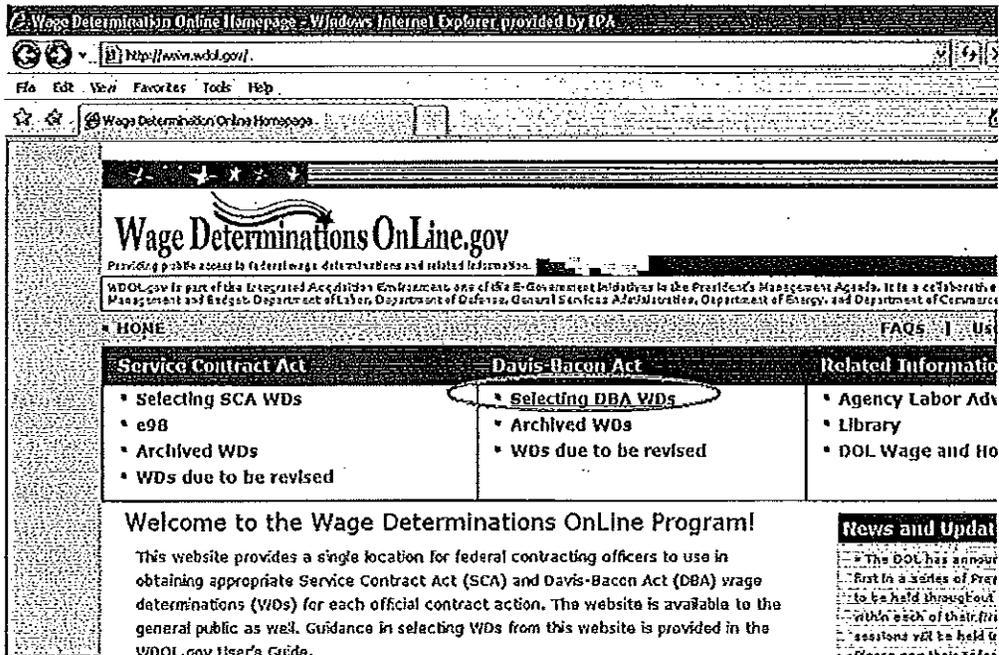
EPA has determined that Davis-Bacon prevailing wage requirements apply to the construction, alteration, and repair activity of infrastructure, including all construction, alteration and repair activity involving waste water or drinking water treatment plants that are funded in part or in whole by ARRA funds. All other construction, alteration, and repair activity of infrastructure that is funded through the SRFs ARRA funds, including "Green" projects, non-point source projects, and estuary projects are also subject to DB. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with the recipient state before authorizing work on that site.

For sub-recipients that are not governmental entities receiving ARRA assistance under the SRF programs, Davis-Bacon prevailing wage requirements apply to the construction, alteration, and repair activity of infrastructure, including all construction, alteration and repair activity involving waste water or drinking water treatment plants. All other construction, alteration, and repair activity of infrastructure that is funded through the SRFs ARRA funds, including "Green" projects, non-point source projects, and estuary projects are also subject to DB. If a sub-recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub-recipient must discuss the situation with the recipient state before authorizing work on that site.

### III. Davis Bacon Compliance Procedures

- A. Before Contract Award - Once it is determined that Davis Bacon wage rates will apply to a construction contract, the recipient's contracting organization must state in the solicitation that Davis Bacon Prevailing wage rates are applicable, and bid packages must include the current Davis Bacon general wage determination for the area where construction will occur.

To select the prevailing wage rate determination for a specific locality, go to website <http://www.wdol.gov/>



Then select, "Selecting DBA WDs"

**CAUTION:** Users should note that the only WDs applicable to a particular solicitation or contract are those that have been incorporated by the contracting officer in that contract action.

### Selecting DBA Wage Decisions

Select DBA WD by number:

(Enter WD number in the following format: two letter abbreviation for the state and the number of the WD. For example, VA030003 or MD150 NOT HQ30150.)

OR

By Selection criteria beginning with:

State:

County:

Construction Type:  (Types of Construction Under DBA)

WD Number:   


- BUILDING
- HEAVY
- HIGHWAY
- RESIDENTIAL

Browse by state/territory.  
 View the latest modifications and additions to the Davis-Bacon Database.  
 View the modifications or additions to Davis-Bacon Wage Determinations due to and published on WDOJ.gov.  
 View Archived Wage Determinations

- 1) Input the State and County where the construction site is located. Also input the type of construction for the project as Building, Heavy, Highway or Residential.

a) For Brownfields Petroleum cleanup and Leaking Underground Storage Tank (LUST) projects, EPA has determined that when soliciting competitive contracts, awarding new contracts or issuing task orders; work assignments or similar instruments to existing contractors (ordering instruments) for installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping; including soil excavation/replacement, the recipients shall use the "Heavy Construction" classification.

When soliciting competitive contracts; awarding new contracts or issuing ordering instruments for soil excavation/replacement; tank removal; and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites; hospitals; fire stations; industrial or freight terminal facilities; or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant, the recipient shall use the "Building Construction" classification.

When soliciting competitive contracts; awarding new contracts or issuing ordering instruments for soil excavation/replacement; tank removal and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant, the recipient shall use the "Heavy Construction" classification.

Recipients must discuss unique situations that may not be covered by the General Wage Determinations described above with EPA. If, based on discussions with a recipient, EPA determines that DB applies to a unique situation (e.g. unusually extensive excavation), the Agency will advise the recipient which General Wage Determination to use based on the nature of the construction activity at the site.

b) For Brownfield Hazardous Waste Cleanup projects, EPA has determined that when soliciting competitive contracts or issuing ordering instruments to existing contractors for, the excavation and removal of hazardous substances and/or the construction of caps or barriers, recipient shall use the "Heavy Construction" classification.

When soliciting competitive contracts or issuing ordering instruments for the construction of structures which house treatment equipment and abatement of contamination in buildings (other than residential structures less than 4 stories in height), recipient shall use "Building Construction" classification.

When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height, the recipient shall use "Residential Construction" classification.

Recipients must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with a Recipient, EPA determines that DB applies to a unique situation the Agency will advise the recipient which General Wage Classification to use based on the nature of the construction activity at the site.

Note: Depending on the particular EPA program, the Davis Bacon Terms and Conditions may already categorize the construction type that applies.

c) The Terms and Conditions for Brownfields, Recovery Act LUST and Superfund grants contain EPA determinations of construction classification types. Generally, SRF funded construction of wastewater treatment plants is classified as "Heavy Construction" although certain Section 319 (Nonpoint Source Management) and Section 320 (National Estuary Program) projects may have different construction types.

- i. Building Construction. Includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Also, the installation of heavy machinery and/or equipment does not generally change the project's character as a building.
- ii. Highway Construction. Includes construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.
- iii. Residential Construction. Includes the construction, alteration or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.
- iv. Heavy Construction. Includes those projects that are not properly classified as either "building," "highway," or "residential." Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Some contracts or projects may require more than one general schedule to be included depending on the nature and extent of the work. This is described in more detail in the DOL All Agency Memos No. 130 and 131.

Also refer to DOL memoranda AAM 130 and 131, if additional guidance is needed in selecting the Construction Type or if multiple types apply.  
<http://www.dol.gov/esa/whd/programs/dbra/docs/memo-131.pdf>

- 2) Once the State, County and Construction Type are input, the appropriate general wage determination or General Wage Decision for your project will be provided.

Let's assume a construction project for a Brownfields project where excavation and cleanup of hazardous waste is being advertised. The project site is Berks County, Pennsylvania and per the T&Cs is considered "Heavy Construction".

In this particular case four "heavy" general decisions are provided; PA14 for heavy and highway, PA22 for heavy TV/grout sewer clean, PA40 for heavy sewer/water treating plant and PA50 for heavy dredging. Since the decisions related to sewer or dredging don't apply, the PA14 heavy and highway decision would apply. General Decision Number: PA080014 08/28/2009 PA14 in its entirety would be enclosed in the bid documents.

General wage determinations are in effect nationwide for most counties for each general type of construction (building, residential, highway, heavy)

*(the following example of a general wage decision has been edited for brevity)*

General Decision Number: PA080014 08/28/2009 PA14  
Superseded General Decision Number: PA20070014  
State: Pennsylvania  
Construction Types: Heavy and Highway

Counties: Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York Counties in Pennsylvania.

**HEAVY AND HIGHWAY CONSTRUCTION PROJECTS (Excluding Sewer Grouting Projects and Excluding Sewage and Water Treatment Plant Projects)**

Modification Number	Publication Date
19	06/26/2009
20	07/03/2009
21	07/10/2009

22 07/24/2009  
 23 08/28/2009

	Rates	Fringes
BOILERMAKER	\$38.81	25.26
BOIL0013-003 09/30/2008		

CARP0076-011 05/01/2008  
 COLUMBIA, MONTOUR, NORTHUMBERLAND, SCHUYLKILL, SNYDER, UNION,  
 the lower part of Luzerne county, Carbon County, Banks, Lusanna, Lehigh, Packer, Kidder townships,  
 and part of Penn Forest

	Rates	Fringes
MILLWRIGHT	\$26.56	13.02
ELEC0126-001 06/01/2008		

Line Construction:  
 (ADAMS, CUMBERLAND, DAUPHIN, LANCASTER, LEBANON, JUNIATA, PERRY AND YORK  
 COUNTIES)

Groundman	\$19.63	26%+\$5.55
Lineman	\$34.65	26%+\$5.55
Truck Operator	\$21.36	26%+\$5.55
Winch Truck Operator	\$23.10	26%+\$5.55

Line Construction:  
 (BERKS AND LEHIGH NORTHAMPTON COUNTIES)

Groundman	\$19.99	26%+5.55
Lineman	\$35.28	26%+5.55
Truck Driver	\$21.76	26%+5.55
Winch Truck Operator	\$23.52	26%+5.55

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 \* ENGI0542-004 05/01/2009

	Rates	Fringes
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Power equipment operators:  
 (HIGHWAY CONSTRUCTION AND WATER LINES CONSTRUCTION (OFF PLANT  
 SITE))

GROUP 1	\$27.45	16.30
GROUP 1a	\$29.70	16.98
GROUP 2	\$26.27	15.96

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1 - Pile drivers, all types of cranes, all types of backhoes, draglines, keystones, all types  
 of shovels. Ironworkers:

Projects Over 25 Million Dollars	\$ 33.55	22.42
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Projects Under 25 Million Dollars	\$33.05	22.42
	Rates	Fringes
Laborers:		
GROUP 1	\$16.22	11.03
GROUP 2.	\$22.84	11.03

LABORERS CLASSIFICATIONS

GROUP 1: Flag person

GROUP 2: Hazardous/Toxic/Asbestos Waste Handler, Lead Paint Handler

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PAIN0021-026 05/01/2009

ADAMS, CUMBERLAND, DAUPHIN, LANCASTER, PERRY, AND YORK COUNTIES

	Rates	Fringes
Painters:		
Bridge.	\$28.05	8.90
Brush	\$24.05	8.90
Spray, Sandblast	\$25.05	8.90

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END OF GENERAL DECISION

- 3) Sub-recipients and borrowers should refer to their agreement with the prime Recipient or State for any notification or approvals that may be required by their Grantor regarding the selection of wage rate determinations.

For recipients who are non-governmental entities that are receiving grants directly from EPA, the recipient is required to obtain EPA concurrence of the wage determination selected before including the determination in the contract solicitation. In these instances, the EPA Regional Davis Bacon Coordinator (Regional Coordinator) will obtain the necessary construction contract information listed in Appendix A from the Recipient to review and provide Agency concurrence via email.

For recipients who are non-governmental entities that are receiving grants from States (e.g. SRF Programs), the recipient is required to obtain State concurrence of the wage determination selected before including the determination in the contract solicitation.

In the event a recipient requires assistance regarding wage determinations, they may contact the EPA Davis Bacon Regional Coordinator identified in the grant award for direction or assistance.

- 4) Before bid opening, the wage determination website should be continually monitored by the contracting organization for modifications. Generally, the most current published wage determination at the time of contract

award must be incorporated into the contract. A wage determination update issued less than 10 days before bid opening shall be in effect unless there is not a reasonable time to notify all prospective bidders. In these cases the relevant facts should be documented in the contract file

A convenient way to monitor potential wage determination modifications is to sign up for the alert service as shown below.

**CAUTION:** Users should note that the only WDs applicable to a particular solicitation or contract are those that have been incorporated by the contracting officer in that contract action.

### Selecting DBA Wage Decisions

The Wage Determination you have requested is below.

Please scroll down to review the WD carefully to ensure that it is appropriate for the specific contract action.

State: New Jersey	
Construction Type: Heavy	
County: Union County in New Jersey.	
HEAVY CONSTRUCTION PROJECTS	
Modification Number	Publication Date
0	04/24/2009
1	06/05/2009
2	07/03/2009
3	07/24/2009
CARP0006-009 05/01/2009	

[Printer Friendly Version](#)

[Sign Up for Alert Service](#)

[Find Another WD](#)

[Exit](#)

**CAUTION:** Users should note that the only WDs applicable to a particular solicitation or contract are those that have been incorporated by the contracting officer in that contract action.

### Selecting DBA Wage Decisions

**CAUTION:** The Alert Service does not relieve the contracting officers of the obligation under DBA and its regulations to use timely received new or revised DBA WDs in contract actions.

#### Alert Service:

If you wish to be notified of revisions made to this WD, please provide the following information:

Email address:

Alert Identifier (enter contract/solicitation number or create your own):

To set the duration of your Alert Service, please enter a specific date (MM/DD/YYYY):

OR

Select a specific period of time:

Use Above Data

120 days

90 days

45 days

[Submit Alert Service Request](#)

[Find Another WD](#)

[Exit](#)

B. After Contract Award - After solicitation, bid opening and contractor selection by the recipient contracting organization, the prevailing wage determination is included in the final construction contract between the recipient, subrecipient or borrower and its contractor.

- 1) In the event the construction contract is not awarded within 90 days of the bid opening date, any modification to the prevailing wage determination published prior to award of the contract shall be effective and should be included in the award documents, or by modification to the contract documents.
- 2) In these situations, the contracting organization may request an extension of the 90-day period from the DOL-WHD Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of government business. The DOL-WHD Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

For non profit contracting organizations receiving grants directly from EPA, the contracting organization shall provide the completed request to the EPA Regional Coordinator. The Regional Coordinator will then send the completed extension request via cover memorandum to the U. S. Department of Labor for processing. (Reference 29 CFR Part 1, section 1.6 for further direction)

For non profit contracting organizations receiving grants directly from States (e.g. SRF Programs), the contracting organization shall provide the completed request to the State. The State will then send the completed extension request via cover memorandum to the U. S. Department of Labor for processing. (Reference 29 CFR Part 1, section 1.6 for further direction)

- 3) The DOL-WHD may issue a wage determination after contract award or after the beginning of construction if the contracting organization has failed to incorporate a wage determination in a contract required to contain prevailing wage rates, or has used a wage determination which by its terms or the provisions of Department of Labor regulations clearly does not apply to the contract. The DOL-WHD Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the request for the wage determination.

Under any of the above circumstances, the organization entering into the contract shall either terminate and re-solicit the contract with the valid wage determination, or incorporate the valid wage determination

retroactive to the beginning of construction through supplemental agreement or through change order, *Provided* That the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.

- 4) The organization responsible for awarding and administering the contract shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The organization shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - b) the classification is utilized in the area by the construction industry; and
  - c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - d) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the recipient (the contracting organization) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the recipient to the DOL on a completed Conformance Request SF 1444: (<http://www.wdol.gov/docs/sf1444.pdf>)

Recipients should complete the SF 1444 and forward the completed form along with the applicable wage determination, by email to Ms. Beverly Mitchell at [mitchell,beverly@dol.gov](mailto:mitchell,beverly@dol.gov). A Carbon Copy should be sent to Ms. Vanessa Shaw-Jennings, Branch Chief, DOL Branch of Construction Wage Determination at [shaw-jennings.vanessa@dol.gov](mailto:shaw-jennings.vanessa@dol.gov). Concurrently, the recipient should forward a copy of the entire request package by email to the EPA DB Coordinator. Prior to submitting an SF 1444 for an additional wage rate, the recipient should confer with their local DOL WHD office to see if it is actually necessary to do so.

DOL will accept SF 1444's for processing via fax, or hard copy.

The DOL-WHD Administrator, or an authorized representative, will approve, modify, or disapprove each additional classification action within 21 days of receipt and so advise the recipient. Upon receipt of the DOL action, the recipient will send a copy of the DOL determination to the EPA DB Coordinator.

Additional assistance can be obtained from DOL offices listed at the following website.

<http://www.dol.gov/esa/contacts/whd/america2.htm>

- 5) In the event a labor classification is not addressed during the construction contract period, the construction contractor, the laborers and mechanics to be employed in the classification (if known), or their representatives, and the recipient (the contracting organization) must complete a Conformance Request SF 1444 that lists the classification and proposed wage rate along with the applicable wage determination and submit the complete package to DOL. <http://www.wdol.gov/docs/sf1444.pdf>

The procedures described in III.B.4.above should then be followed for processing the SF 1444.

In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the parties will complete the SF 1444, indicate their disagreement at the bottom and forward the form along with the applicable wage determination to DOL.

The procedures described in III.B.4.above should then be followed for processing the SF 1444.

- 6) The contractor and all subcontractors are responsible for posting the prevailing wage determination at the site of work (which includes all SF 1444 conformances) for the construction project along with the DOL Davis Bacon poster. The poster shall be placed at the site of the work in a prominent and accessible place where it may be easily seen by employees. <http://www.dol.gov/esa/whd/programs/dbra/wh1321.htm>
- 7) The contractor is required to pay the prevailing wage rates on a weekly basis to laborers and mechanics in accordance with the requirements of 29 CFR 5.5, which are incorporated into the actual construction contract.
  - a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting organization. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a) (3) (i).

The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division web site at <http://www.dol.gov/esa/whd/forms/wh347.pdf> or its successor site. The WH-347 form is particularly suited for this purpose since the

reverse side has a statement of compliance where the contractor can sign. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- 8) The contracting organization is responsible for receiving and maintaining weekly certified payrolls from the contractor that laborers, mechanics, trades, apprentices and trainees identified in the Davis Bacon wage determination are paid the prevailing wage rate. Periodically the contracting organization is responsible for reviewing certified payrolls to ensure that the prevailing wages and fringe benefits being paid are consistent with the applicable wage determination.

It is highly recommended that emphasis be placed on receiving and reviewing certified payrolls by the contracting organization during the first weeks of construction activity. Doing so will help ensure contractor's compliance with paying at least the required Davis Bacon wage rates to laborers and mechanics.

- 9) The contracting organization is also responsible to perform periodic employee interviews in confidence to validate the accuracy of certified payrolls for laborers, mechanics, trades, apprentices and trainees.

EPA Award Terms and Conditions require that employee interviews be conducted within the first two weeks of the initial payroll and within two weeks of the final payroll for the project. Notwithstanding, EPA may authorize an exception to these requirements on a case by case basis when extenuating circumstances justify. (See III.B.11) below)

Labor interviews can be documented using an SF 1445 interview form that can be found at the following website.

<http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formId=12BF5D0E2DC4484685256CBC0062F375&viewType=DETAIL>

- 10) Recipients must immediately report violations of the DB prevailing wage requirements to the EPA DB Coordinator listed in the assistance agreement and to the appropriate DOL WHD Office listed at <http://www.dol.gov/esa/contacts/whd/america2.html>.

Typical violations are: misclassification of laborers and mechanics; failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours); inadequate recordkeeping; such as not counting all hours worked by an individual in two or more classifications during a day; failure to maintain a copy of bona fide apprenticeship program and individual registration documents for apprentices; failure to submit certified weekly payrolls and failure to post the Davis-Bacon poster and applicable wage determination.

The resolution of violations of the DB prevailing wage requirements should be attempted at the lowest possible level by the recipient and contractor. Unresolved or persistent violations should be reported to the Davis Bacon Coordinator and the DOL for further action.

Resolution of potential Davis Bacon violations should be conducted in accordance with DOL memorandum 182. <http://www.wdol.gov/aam/AAM182.pdf>

- 11) Certified payroll records and labor interviews are required to be retained by the contracting organization and contractor for three years after completion of the construction project.

- 12) Additions and exceptions to EPA grant awards.

In accordance with 40 CFR 31.6 (Additions and Exceptions) and 40 CFR 30.4 (Deviations), the Director, Grants Administration Division, is authorized to grant the exceptions and the EPA Director is also authorized to approve exceptions, on a class or an individual case basis, to EPA program specific assistance regulations other than those which implement statutory and executive order requirements. EPA may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by EPA.

#### IV. Davis Bacon – Additional Resources

- A. Some additional sources of information regarding the requirements and complying with Davis Bacon and Related Acts are:

- 1) DBRA FAQ's <http://www.dol.gov/esa/whd/programs/dbra/faqs.htm>
- 2) DOL Wage & Hour Division <http://www.dol.gov/esa/WHD/>
- 3) DOL Davis Bacon Fact Sheet  
<http://www.dol.gov/esa/whd/regs/compliance/whdfs66.pdf>
- 4) General Davis Bacon Act requirements and applicability Compliance Assistance By Law - The Davis-Bacon and Related Acts (DBRA)
- 5) Wage determinations on line <http://www.wdol.gov/>
- 6) Selecting the appropriate construction type (see section 4b)  
<http://www.wdol.gov/usrguide/sectionc.aspx#c4b>  
<http://www.dol.gov/esa/whd/programs/dbra/docs/memo-131.pdf>
- 7) Selecting a wage determination <http://www.wdol.gov/dba.aspx#0>
- 8) Wage rate posting requirements  
<http://www.dol.gov/esa/whd/programs/dbra/wh1321.htm>

- 9) Performing a review of certified payrolls  
<http://www.dol.gov/esa/whd/forms/wh347.pdf>
- 10) Conducting labor interviews  
[http://contacts.gsa.gov/webforms.nsf/0/12BF5D0E2DC4484685256CBC0062F375/\\$file/sf1445.pdf](http://contacts.gsa.gov/webforms.nsf/0/12BF5D0E2DC4484685256CBC0062F375/$file/sf1445.pdf)
- 11) Recommendations for resolving wage rate violations.  
DOL employment law guide  
<http://www.dol.gov/compliance/guide/dbra.htm>
- 12) Davis Bacon Reference Material  
<http://www.gpo.gov/davisbacon/referencemat.html>
- 13) Prevailing Wage Resource Book  
<http://www.dol.gov/esa/whd/recovery/pwrb/toc.htm>
- 14) DOL wage and hour division offices U.S. Department of Labor — Employment Standards Administration (ESA) — Wage and Hour Division (WHD) — District Office Locations
- 15) DOL wage and Hour Division ARRA website  
<http://www.dol.gov/esa/whd/recovery/>

B. Davis Bacon Non-Governmental Wage Determination Questionnaire

- 1) Recipient Name
- 2) Recipient street address, city, state and zip code
- 3) Recipient telephone and fax
- 4) Recipient point of contact
- 5) Recipient point of contact telephone and fax number
- 6) Recipient point of contact email address
- 7) EPA Grant Number
- 8) EPA program
  - a) Hazardous Waste Cleanup construction projects involving the onsite remediation of hazardous substances
  - b) Brownfields Petroleum construction projects involving the onsite cleanup of petroleum
  - c) contamination
  - d) Diesel Emissions Reduction Act construction activities involving the installation of emissions technology by construction laborers and mechanics on site when part of a construction contract
- 9) Construction Project Title
- 10) Project Solicitation or Contract Number
- 11) Request for Proposal or Construction Contract Solicitation date
- 12) Scheduled Bid Opening date

- 13) Anticipated Construction Contract Execution date
- 14) Estimated Construction Contract price or cost range.
- 15) Scheduled Construction Contract start date
- 16) Construction Contract time duration
- 17) Street, County and State of construction contract site
- 18) Construction Type (provided by Recipient)
  - a) Building
  - b) Heavy
  - c) Highway
  - d) Residential

- 19) Recipient selected General Wage Determination Decision and modification number?

Yes  No EPA Davis Bacon Coordinator - concurs with wage determination selected by recipient

- 20) Corrected Wage determination and modification number from EPA Davis Bacon Coordinator



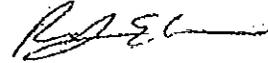
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

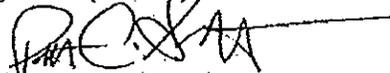
MAR 20 2014

OFFICE OF WATER

MEMORANDUM

SUBJECT: Implementation of American Iron and Steel provisions of P.L. 113-76,  
Consolidated Appropriations Act, 2014

FROM: For Andrew D. Sawyers, Director   
Office of Wastewater Management (4201M)

Peter C. Grevatt, Director   
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors  
Regions I - X

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel (AIS)" requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to 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 if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

Section 436 also sets forth certain circumstances under which EPA may waive the AIS requirement. Furthermore, the Act specifically exempts projects where engineering plans and specifications were approved by a State agency prior to January 17, 2014.

The approach described below explains how EPA will implement the AIS requirement. The first section is in the form of questions and answers that address the types of projects that must comply with the AIS requirement, the types of products covered by the AIS requirement, and compliance. The second section is a step-by-step process for requesting waivers and the circumstances under which waivers may be granted.

## Implementation

The Act states:

Sec. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the "Administrator") finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out

the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.

The following questions and answers provide guidance for implementing and complying with the AIS requirements:

### Project Coverage

**1) What classes of projects are covered by the AIS requirement?**

All treatment works projects funded by a CWSRF assistance agreement, and all public water system projects funded by a DWSRF assistance agreement, from the date of enactment through the end of Federal Fiscal Year 2014, are covered. The AIS requirements apply to the entirety of the project, no matter when construction begins or ends. Additionally, the AIS requirements apply to all parts of the project, no matter the source of funding.

**2) Does the AIS requirement apply to nonpoint source projects or national estuary projects?**

No. Congress did not include an AIS requirement for nonpoint source and national estuary projects unless the project can also be classified as a 'treatment works' as defined by section 212 of the Clean Water Act.

**3) Are any projects for the construction, alteration, maintenance, or repair of a public water system or treatment works excluded from the AIS requirement?**

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.

**4) What if the project does not have approved engineering plans and specifications but has signed an assistance agreement with a CWSRF or DWSRF program prior to January 17, 2014?**

The AIS requirements do not apply to any project for which an assistance agreement was signed prior to January 17, 2014.

- 5) What if the project does not have approved engineering plans and specifications, but bids were advertised prior to January 17, 2014 and an assistance agreement was signed after January 17, 2014?**

If the project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the approval date for purposes of the exemption in section 436(f).

- 6) What if the assistance agreement that was signed prior to January 17, 2014, only funded a part of the overall project, where the remainder of the project will be funded later with another SRF loan?**

If the original assistance agreement funded any construction of the project, the date of the original assistance agreement counts for purposes of the exemption. If the original assistance agreement was only for planning and design, the date of that assistance agreement will count for purposes of the exemption 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.

- 7) What if the assistance agreement that was signed prior to January 17, 2014, funded the first phase of a multi-phase project, where the remaining phases will be funded by SRF assistance in the future?**

In such a case, the phases of the project 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. However, there are many situations in which major construction activities are clearly undertaken in phases that are distinct in purpose, time, or place. In the case of distinct phases, 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.

- 8) What if a project has split funding from a non-SRF source?**

Many States intend to fund projects with "split" funding, from the SRF program and from State or other programs. Based on the Act language in section 436, which requires that American iron and steel products be used in any project for the construction, alteration, maintenance, or repair of a public water system or treatment works receiving SRF funding between and including January 17, 2014 and September 30, 2014, any project that is funded in whole or in part with such funds must comply with the AIS requirement. A "project" consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of SRF projects into separate and smaller contracts or assistance agreements to avoid AIS coverage on some portion of a larger

project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreement for SRF and State or other funding would carry separate requirements.

**9) What about 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.

**10) Do the AIS requirements apply to any other EPA programs, besides the SRF program, such as the Tribal Set-aside grants or grants to the Territories and DC?**

No, the AIS requirement only applies to funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12)

**Covered Iron and Steel Products**

**11) What is an iron or steel product?**

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail below);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail below);
- Reinforced precast concrete; and
- Construction materials (defined in more detail below).

**12) What does the term 'primarily iron or steel' mean?**

'Primarily iron or steel' places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

**13) Can you provide an example of how to perform a cost determination?**

For example, 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 to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem, coupling, valve, seals, etc). However, 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. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

**14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product be produced in the US?**

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

**15) What is the definition of steel?**

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

**16) What does 'produced in the United States' mean?**

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, 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. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the

material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

**17) Are the raw materials used in the production of iron or steel required to come from US sources?**

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

**18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?**

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For 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.

**19) What is the definition of 'municipal castings'?**

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

- 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.

**20) What is 'structural steel'?**

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. 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.

**21) What is a 'construction material' for purposes of the AIS requirement?**

Construction materials are those 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. Some of these products may overlap with what is also considered "structural steel". This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

**22) What is not considered a 'construction material' for purposes of the AIS requirement?**

Mechanical and electrical components, equipment and systems are not considered construction materials. 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.

The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and

data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

**23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?**

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

**24) What processes must occur in the US to be compliant with the AIS requirement for 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 and meet the same standards as for any other iron or steel product. Additionally, 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.

### Compliance

**25) How should an assistance recipient document compliance with the AIS requirement?**

In order to ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements. Sample language for assistance agreements and contracts can be found in Appendix 3 and 4.

EPA recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the AIS requirement and assistance recipients can verify that products comply with the AIS requirement. The process also establishes accountability and better enables States to take enforcement actions against violators.

Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer,

processor, etc) of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be quite simple. Typically, it includes the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party. Attached, as Appendix 5, are sample certifications. These certifications should be collected and maintained by assistance recipients.

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. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information. Step certification is the best practice.

**26) How should a State ensure assistance recipients are complying with the AIS requirement?**

In order to ensure compliance with the AIS requirement, States SRF programs must include specific AIS contract language in the assistance agreement. Sample language for assistance agreements can be found in Appendix 3.

States should also, as a best practice, conduct site visits of projects during construction and review documentation demonstrating proof of compliance which the assistance recipient has gathered.

**27) What happens if a State or EPA finds a non-compliant iron and/or steel product permanently incorporated in the project?**

If a potentially non-compliant product is identified, the State should notify the assistance recipient of the apparent unauthorized use of the non-domestic component, including a proposed corrective action, and should be given the opportunity to reply. If unauthorized use is confirmed, the State can take one or more of the following actions: request a waiver where appropriate; require the removal of the non-domestic item; or withhold payment for all or part of the project. Only EPA can issue waivers to authorize the use of a non-domestic item. EPA may use remedies available to it under the Clean Water Act, the Safe Drinking Water Act, and 40 CFR part 31 grant regulations, in the event of a violation of a grant term and condition.

It is recommended that the State work collaboratively with EPA to determine the appropriate corrective action, especially in cases where the State is the one who identifies the item in noncompliance or there is a disagreement with the assistance recipient.

If fraud, waste, abuse, or any violation of the law is suspected, the Office of Inspector General (OIG) should be contacted immediately. The OIG can be reached at 1-

888-546-8740 or [OIG\\_Hotline@epa.gov](mailto:OIG_Hotline@epa.gov). More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

**28) How do international trade agreements affect the implementation of the AIS requirements?**

The AIS provision applies in a manner consistent with United States obligations under international agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to such agreements. In general, SRF assistance recipients are not signatories to such agreements, so these agreements have no impact on this AIS provision. In the few instances where such an agreement applies to a municipality, that municipality is under the obligation to determine its applicability and requirements and document the actions taken to comply for the State.

**Waiver Process**

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework described below will allow States, on behalf of the assistance recipients, to apply for waivers of the AIS requirement directly to EPA Headquarters. Only waiver requests received from states will be considered. Pursuant to the Act, EPA has the responsibility to make findings as to the issuance of waivers to the AIS requirements.

**Definitions**

The following terms are critical to the interpretation and implementation of the AIS requirements and apply to the process described in this memorandum:

**Reasonably Available Quantity:** The quantity of iron or steel products is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

**Satisfactory Quality:** The quality of iron or steel products, as specified in the project plans and designs.

**Assistance Recipient:** A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

Attachment 8: DWSRF Project Benefits Reporting Data Elements	
Project Benefits Data Fields	Required/Option
Borrower	required
Loan Execution Date	required
PWSID Number	required
Tracking number	required
Other tracking number	optional
Assistance Type	required
Loan Interest Rate	required
State Market Interest Rate	optional
Loan Term	optional
Incremental Funding	optional
Phase #	optional
Original Tracking Number	optional
Same Health Benefits	optional
Total Assistance (Initial Amount)	required
Total Assistance (Final Amount)	required
Additional Subsidy Provided	required 2010-2012
Grant Amount \$	required 2010-2012
Negative Interest Amount \$	required 2010-2012
Principal Forgiveness Amount \$	required 2010-2012
Net Loan Amount	optional
Funding is complete and funded amount has changed from initial amount	required 2010-2012
Based on states criteria, could the borrower have afforded the project without additional subsidy provided	required 2010-2012
% Funded By DWSRF	optional
Disadvantaged Assistance	required
IUP Year	optional
Assistance applies to_ grant year requiredments	required
System Name	required
System Type	required
Ownership Type	optional
Age of System	optional
Project Name	required
Project Description	required
Project Purpose	required
Number of Projects Funded	required
Public Health Impact Description	required
Other Project Comments	optional
Project Start Date	required
Project Completion Date	required
Project Consolidates Systems	required
Number of System Eliminated	optional
Project Creates New Systems	required
Population Served by the project	optional

Project Benefits Data Fields	Required/Option
Population Served by the system	required
Borrower Population	optional
Number of connection by the project	optional
Number of connections by the system	optional
Counties Served Primary	optional
Other County 1	optional
Other County 2	optional
Address Line 1	required
Address Line 2	optional
City, State, Zip Code	required
Congressional District	optional
Project Includes Green Project Reserve	required
Green Infrastructure Amount	required if green
Energy Efficiency Amount	required if green
Water Efficiency Amount	required if green
Green Innovative Amount	required if green
Amount of additional subsidy provided used too fund GPR.	required if green 2010 - 2012
NIMS project categories (Transmission, Treatment, etc...)	required
Compliance Objectives	optional
State set-aside information recipient	required
State set-aside Funding Amount	required
State set-aside Funding type	required
Grant number	required
Grant Award date	required
State Organization receiving grant	required

This list does not include FFATA requirements



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

OFFICE OF WATER

March 11 2018

**MEMORANDUM**

**SUBJECT:** Application of American Iron and Steel Requirements for Drinking Water State Revolving Fund Projects for Fiscal Year 2018

**FROM:** Anita Maria Thompkins, Director  
Drinking Water Protection Division

A handwritten signature in black ink, appearing to read "Anita Maria Thompkins".

**TO:** Water Division Directors  
Regions I-X

On March 23, 2018, the President signed Public Law 115-141, the "Consolidated Appropriations Act, 2018" (hereinafter referred to as the Appropriation) which provides fiscal year 2018 appropriations for continuing projects and activities of the Federal Government through September 30, 2018. This law extends funding for the Drinking Water State Revolving Fund for the time period of March 23, 2018, through September 30, 2018, with the same conditions that were made applicable by the language of the FY 2017 appropriation, including the requirement for the use of American Iron and Steel products in projects receiving financial assistance from the DWSRF.

As you are aware, the Consolidated Appropriations Act, 2017 (P.L. 115-31), Consolidated Appropriations Act, 2016 (P.L. 114-113), the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) and the Consolidated Appropriations Act, 2014 (P.L. 113-76) included the "American Iron and Steel" requirement that recipients of DWSRF assistance are to 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.

All assistance agreements starting October 1, 2017, through September 30, 2018 must include the AIS requirement. In addition, all guidance issued since FY 2014 will also continue to be applicable until the AIS provision is no longer required. This memo will remain in place through September 30, 2018, and will continue in force under any continuing resolutions that use similar language as Section 424 of the "Consolidated Appropriations Act, 2018."

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

cc: Ronald Bergman, Associate Division Director, Drinking Water Protection Division  
Elizabeth Corr, Associate Division Director, Drinking Water Protection Division  
Felecia Fort, Associate Chief, Infrastructure Branch  
Kirsten Anderer, Environmental Engineer, Drinking Water State Revolving Fund  
Jorge Medrano, Environmental Engineer, Drinking Water State Revolving Fund



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

NOV 27 2017

OFFICE OF WATER

**MEMORANDUM**

**SUBJECT:** Application of American Iron and Steel Requirements for Drinking Water State Revolving Fund Projects Under the Continuing Appropriation Signed September 8, 2017

**FROM:** Anita Maria Thompkins, Director  
Drinking Water Protection Division *Anita Maria Thompkins*

**TO:** Water Management Division Directors  
Regions I-X

On September 8, 2017, the President signed Public Law 115-56, the "Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017" (hereinafter referred to as the Continuing Resolution) which provides fiscal year 2018 appropriations for continuing projects and activities of the Federal Government through December 8, 2017. This law extends funding for the Drinking Water State Revolving Fund for the time period of October 1, 2017, through December 8, 2017, with the same conditions that were made applicable by the language of the FY 2017 appropriation, including the requirement for the use of American Iron and Steel products in projects receiving financial assistance from the DWSRF.

As you are aware, the Consolidated Appropriations Act, 2017 (P.L. 115-31), Consolidated Appropriations Act, 2016 (P.L. 114-113), the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) and the Consolidated Appropriations Act, 2014 (P.L. 113-76) included the "American Iron and Steel" requirement that recipients of DWSRF assistance are to 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.

All assistance agreements starting October 1, 2017, and such agreements subject to the same requirements under successive continuing resolutions, must include the AIS requirements until that condition is no longer statutorily mandated. In addition, all guidance issued since FY 2014 will also continue to be applicable until the AIS provision is no longer required.

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

cc: Ronald Bergman, Associate Division Director, Drinking Water Protection Division  
Elizabeth Corr, Associate Division Director, Drinking Water Protection Division  
Felecia Fort, Associate Chief, Infrastructure Branch  
Kirsten Anderer, Environmental Engineer, Drinking Water State Revolving Fund  
Jorge Medrano, Environmental Engineer, Drinking Water State Revolving Fund



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 

**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](mailto: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  
Jorge Medrano, Environmental Engineer, DWSRF



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

OFFICE OF  
WATER

FEB · 3 2016

**MEMORANDUM**

**SUBJECT:** Application of American Iron and Steel Requirements to Fiscal Year 2016 Drinking Water State Revolving Funds under the Consolidated Appropriations Act, 2016

**FROM:** Anita Maria Thompkins, Director *Anita Maria Thompkins*  
Drinking Water Protection Division

**TO:** Water Management Division Directors  
Regions I-X

On December 18, 2015, the President signed Public Law 114-113, the "Consolidated Appropriations Act, 2016," which provides fiscal year 2016 full-year appropriations through September 30, 2016, including funding for the Environmental Protection Agency. Section 424 of this law contains the same requirement for American Iron and Steel products that was included in the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) and the Consolidated Appropriations Act, 2014 (P.L. 113-76).

As you are aware, the previous two appropriations acts included the "American Iron and Steel" requirement that recipients of DWSRF assistance are to 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 if the project is funded through an assistance agreement executed starting January 17, 2014 through September 30, 2015.

All assistance agreements starting October 1, 2015, through September 30, 2016, must include the AIS requirements. All AIS guidance issued for FY 2014 and FY 2015 will continue to be applicable throughout the same time period. This memo will remain in place for the time period of October 1, 2015, through September 30, 2016, and will continue in force under any continuing resolutions that use similar language as Section 424 of the "Consolidated Appropriations Act, 2016."

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

**Attachments**

**cc:** Ronald Bergman, Deputy Director, Drinking Water Protection Division  
Kirsten Anderer, Environmental Engineer, DWSRF  
Jorge Medrano, Environmental Engineer, DWSRF



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

OCT 13 2015

OFFICE OF  
WATER

**MEMORANDUM**

**SUBJECT:** Application of American Iron and Steel Requirements for Drinking Water State Revolving Fund Projects Under the Continuing Appropriation Signed September 30, 2015

**FROM:** Ronald Bergman, Acting Division Director  
Drinking Water Protection Division

A handwritten signature in black ink, appearing to read "Ron Bergman".

**TO:** Water Management Division Directors  
Regions I-X

On September 30, 2015, the President signed Public Law 114-53, the "Continuing Appropriation Act, 2016" (hereinafter referred to as the Continuing Resolution) which provides fiscal year 2016 appropriations for continuing projects and activities of the Federal Government through December 11, 2015. This law extends funding for the Drinking Water State Revolving Fund for the time period of October 1, 2015, through December 11, 2015, with the same conditions that were made applicable by the language of the FY 2015 appropriation, including the requirement for the use of American Iron and Steel products in projects receiving financial assistance from the DWSRF.

As you are aware, the Consolidated and Further Continuing Appropriations Act of 2015 (P.L. 113-235) included the "American Iron and Steel" requirement that recipients of DWSRF assistance are to 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.

All assistance agreements starting October 1, 2015, and such agreements subject to the same requirements under successive continuing resolutions, must include the AIS requirements until that condition is no longer statutorily mandated. In addition, all guidance issued for FY 2014 and FY 2015 will also continue to be applicable until the AIS provision is no longer required.

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

cc: Elizabeth Corr, Associate Division Director, Drinking Water Protection Division  
Chuck Job, Chief, Infrastructure Branch  
Kirsten Anderer, Acting Team Lead, Drinking Water State Revolving Fund



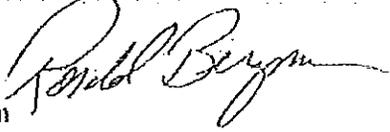
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JAN 15 2015

OFFICE OF  
WATER

**MEMORANDUM**

**SUBJECT:** Application of American Iron and Steel Requirements to Fiscal Year 2015 Drinking Water State Revolving Funds under the Consolidated and Further Continuing Appropriations Act 2015

**FROM:** Ronald Bergman, Acting Director  
Drinking Water Protection Division 

**TO:** Water Management Division Directors  
Regions I-X

On December 16, 2014, the President signed Public Law 113-235, the "Consolidated and Further Continuing Appropriations Act 2015," which provides fiscal year 2015 full-year appropriations through September 30, 2015, including funding for the Environmental Protection Agency. Section 424 of this law contains the same requirement for American Iron and Steel products that was included in the Consolidated Appropriations Act of FY 2014.

As you are aware, the Consolidated Appropriations Act of 2014 (P.L. 113-76) included the "American Iron and Steel" requirement that recipients of DWSRF assistance are to 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 if the project is funded through an assistance agreement executed beginning January 17, 2014, through the end of fiscal year 2014.

All assistance agreements starting October 1, 2014, through September 30, 2015, must include the AIS requirements. All AIS guidance issued for FY 2014 will continue to be applicable throughout the same time period.

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

**Attachments**

**cc:** Elizabeth Corr, Associate Director, Drinking Water Protection Division  
Chuck Job, Chief, Infrastructure Branch  
Kirsten Anderer, Environmental Engineer, DWSRF

## Step-By-Step Waiver Process

### Application by Assistance Recipient

Each local entity that receives SRF water infrastructure financial assistance is required by section 436 of the Act to use American made iron and steel products in the construction of its project. However, the recipient may request a waiver. Until a waiver is granted by EPA, the AIS requirement stands, except as noted above with respect to municipalities covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the AIS requirement, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron and steel products. It is essential that the assistance recipient include the AIS terms in any request for proposals or solicitations for bids, and in all contracts (see Appendix 3 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three conditions is met:

1. Applying the American Iron and Steel requirements of the Act would be inconsistent with the public interest;
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron and steel products needed to complete the project as described in the plans and specifications that may not be available from domestic sources. It may also identify the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the State SRF program. It is strongly recommended that the State designate a single person for all AIS communications. The State SRF designee will review the application for the waiver and determine whether the necessary information has been included. Once the waiver application is complete, the State designee will forward the application to either of two email addresses. For CWSRF waiver requests, please send the application to: [cwsrfwaiver@epa.gov](mailto:cwsrfwaiver@epa.gov). For DWSRF waiver requests, please send the application to: [dwsrfwaiver@epa.gov](mailto:dwsrfwaiver@epa.gov).

### Evaluation by EPA

After receiving an application for waiver of the AIS requirements, EPA Headquarters will publish the request on its website for 15 days and receive informal comment. EPA Headquarters will then use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the State designee that a waiver request has been approved or denied as soon as such a decision has been made. Granting such a waiver is a three-step process:

1. Posting – After receiving an application for a waiver, EPA is required to publish the application and all material submitted with the application on EPA's website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: [http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)
2. Evaluation – After receiving an application for waiver of the AIS requirements, EPA Headquarters will use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver -- that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.
3. Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the State SRF program, and post the signed waiver on our website. The assistance recipient should keep a copy of the signed waiver in its project files.

### 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. An example of a public interest waiver that might be issued could be 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.

EPA also has the authority to issue a public interest waiver that covers categories of products that might apply to all projects.

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron or steel products. EPA may develop national or (US geographic) regional categorical waivers through the identification of similar circumstances in the detailed justifications presented to EPA in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public's interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at [dorfman.jordan@epa.gov](mailto:dorfman.jordan@epa.gov) or (202) 564-0614 or Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at [anderer.kirsten@epa.gov](mailto:anderer.kirsten@epa.gov) or (202) 564-3134.

Attachments

### Appendix 3: Example Loan Agreement Language

ALL ASSISTANCE AGREEMENT MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN SRF ASSISTANCE AGREEMENTS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

#### Appendix 4: Sample Construction Contract Language

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of \_\_\_\_\_ (“Purchaser”) and the \_\_\_\_\_ (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

### Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
<p><b>General</b></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><b>Cost Waiver Requests</b></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><b>Availability Waiver Requests</b></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 and/or supplier 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>		

### Appendix 2: HQ Review Checklist for Waiver Request

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Review Items	Yes	No	N/A	Comments
<p><b>Cost Waiver Requests</b></p> <ul style="list-style-type: none"> <li>• Does the waiver request include 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>— A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market</li> </ul> </li> <li>• Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%?</li> </ul>				
<p><b>Availability Waiver Requests</b></p> <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?               <ul style="list-style-type: none"> <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> </ul> </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?               <p>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)</p> </li> <li>• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested?               <p>Examples include:</p> <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>				

#### Appendix 4: Sample Construction Contract Language

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of \_\_\_\_\_ (“Purchaser”) and the \_\_\_\_\_ (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

### Appendix 3: Example Loan Agreement Language

ALL ASSISTANCE AGREEMENT MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN SRF ASSISTANCE AGREEMENTS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

## Appendix 5: Sample Certifications

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

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

Date

Company Name

Company Address

City, State Zip

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

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are 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

May 30, 2014

American Iron & Steel (AIS) Requirement of the Consolidated Appropriations Act of 2014 (Public Law 113-76) Q&A Part I: Valves and Hydrants

Q1: Does the AIS requirement of the Consolidated Appropriations Act of 2014 require minor, miscellaneous components within a covered valve or hydrant, such as nuts, bolts and washers, to be made in the U.S.?

A1: The definition of "iron and steel products" that must either be domestically produced or subject to a waiver in order to comply with the AIS requirement of the Consolidated Appropriations Act of 2014

**Question 1 has been superseded by the *National Minor Components Waiver* signed on October 27, 2015. This waiver can be found here: [https://www.epa.gov/sites/production/files/2015-10/documents/minor\\_components\\_waiver\\_signed\\_10\\_27\\_15\\_508.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/minor_components_waiver_signed_10_27_15_508.pdf)**

products" that must either be made domestically, or otherwise must comply with the AIS requirement. The minor components represent a very small percentage of the iron and steel in the hydrants and valves that are defined as "iron and steel products." These minor components, which EPA has learned through our research are currently difficult to find domestically in sufficient quantity, such as minor nuts, bolts, and washers, are not required to be of U.S. origin.

Q2: Do the actuators/control systems attached to valves have to comply with the AIS requirement, or just the valve itself?

A2: The AIS requirement of the Consolidated Appropriations Act of 2014 includes valves in its definition of "iron and steel products" that recipients must make certain are either domestically made or subject to a waiver in order to comply with the AIS requirement. Actuators and control systems are not included in the definition. Only the valve itself is required to be either domestically produced or subject to a waiver in order to be compliant with the AIS requirement. Absent a waiver, EPA considers valves and hydrants to be domestically produced if the significant iron and steel components of a covered valve or hydrant – the body, bonnet, shoe, stem, and wedge/disc/gate/ball – if made of iron or steel, is produced in the U.S. See Q1 above for a discussion about minor components. The valves and actuators, while often purchased and shipped together, are two unique products that are manufactured separately and typically attached together during the final step of the process. Valves are included in the definition of "iron and steel products" in the AIS requirement. Actuators, whether manual, electric, hydraulic or pneumatic, are not listed as an "iron and steel product" under the AIS requirement of the Consolidated Appropriations Act of 2014, nor are they considered construction materials. Therefore, they do not need to be domestically produced in the U.S. in order to comply with the requirement.

May 30, 2014

Q3: Are electric powered motor operated valves excluded based on the valve being motorized equipment (i.e. electrical equipment)?

A3: No, electric powered motor operated valves are not excluded based on the valve being motorized equipment. The actuator, a motor that controls the valve, is considered a separate product, which is not listed as an "iron and steel product" under the AIS requirement of the Consolidated Appropriations Act of 2014, nor is it considered a construction material. Therefore, the actuator does not need to be domestically produced in the U.S. in order to comply with the requirement. See Q2 for further clarification.

Q4: Based on EPA's AIS guidance dated March 20, 2014, gates are not considered construction materials and therefore do not have to be produced in the U.S. Does that include gate valves?

A4: No, valves are specifically listed in the Consolidated Appropriations Act of 2014 as an "iron and steel product" and therefore, absent a waiver, must be produced in the U.S. to be in compliance with the requirement if they are "primarily" iron and steel. Gates as referenced in the EPA March 20, 2014 guidance refer only to common sluice and slide gates, and not to gate valves.

September 10, 2014

**American Iron & Steel (AIS) Requirement of the Consolidated Appropriations Act of 2014  
(Public Law 113-76)**

**Q&A Part 2**

**PRODUCT QUESTIONS**

**1. Q: Do all fasteners qualify for de minimis exemption?**

**A:** No. There is no broad exemption for fasteners from the American Iron and Steel (AIS) requirements. Significant fasteners used in SRF projects are not subject to the de minimis waiver for projects and must comply with the AIS requirements. Significant fasteners include fasteners produced to industry standards (e.g., ASTM standards) and/or project specifications, special ordered or those of high value. When bulk purchase of unknown-origin fasteners that are of incidental use and small value are used on a project, they may fall under the national de minimis waiver for projects. The list of potential items could be varied, such as big-box/hardware-store-variety screws, nails, and staples. The key characteristics of the items that may qualify for the de minimis waiver would be items that are incidental to the project purpose (such as drywall screws) and not significant in value or purpose (such as common nails or brads). See the following: [http://water.epa.gov/grants\\_funding/upload/Deminimis-Waiver-04-15-14.pdf](http://water.epa.gov/grants_funding/upload/Deminimis-Waiver-04-15-14.pdf).

EPA also clarifies that minor components of two listed products – valves and hydrants -- may not need to meet the AIS requirements if the minor components comprise a very small quantity of minor, low-cost fasteners that are of unknown origin. See EPA's questions and answers on the subject at the following: [http://water.epa.gov/grants\\_funding/upload/AIS-QandA-Part-1-Valves-and-Hydrants-final.pdf](http://water.epa.gov/grants_funding/upload/AIS-QandA-Part-1-Valves-and-Hydrants-final.pdf).

**2. Q: Does PCCP pipe have to be domestically produced?**

**A:** Yes. Pre-stressed concrete cylinder pipe (PCCP) or other similar concrete cylinder pipes would be comparable to pre-cast concrete which is specifically listed in the Consolidated Appropriations Act of 2014 as a product subject to the AIS requirement.

**3. Q: If the iron or steel is made from recycled metals will the vendor/supplier have to provide a certification document certifying that the recycled metals are domestically produced?**

**A:** No. Recycled source materials used in the production of iron and steel products do not have to come from the U.S. Iron or steel scrap, for instance, are considered raw materials that may come from anywhere. While certification is not required for the raw material, EPA does recommend that additional final processing of iron and steel be certified to have occurred in the U.S.

**4. Q: Do tanks used for filtration systems, if delivered to the construction site separately and then filled with filtration media onsite, have to be domestically produced?**

September 10, 2014

**A: No.** Tanks that are specifically designed to be filters, or as parts of a filtration system, do not have to be domestically produced because these parts are no longer simply tanks, even if the filter media has not been installed and will be installed at the project site, as is customary to do for shipping purposes. These parts have only one purpose which is to be housing for filters and cannot be used in another fashion.

**5. Q: Can a recipient use non-domestic flanged pipe?**

**A: No.** While the Consolidated Appropriations Act of 2014 does not specifically mention flanged pipe, since it does mention both pipe and flanges, both products would need to be domestically produced. Therefore, flanged pipe would also need to be domestically produced.

**6. Q: Can a recipient use non-domestic couplings, expansion joints, and other similar pipe connectors?**

**A: No.** These products would be considered specialty fittings, due to their additional functionality, but still categorized under the larger "fitting" categorization. Fittings are defined as a material that joins pipes together or connects to a pipe (AWWA, The Drinking Water Dictionary, 2000). Therefore, these products must comply with the AIS requirements and be produced domestically.

**7. Q: Can a recipient use non-domestic service saddles and tapping sleeves?**

**A: No.** These products are necessary for pipe repair, to tap a water main, or to install a service or house connection. Therefore, they are included under the larger "pipe restraint" category which is a specifically identified product subject to the domestic preference in the Consolidated Appropriations Act of 2014.

**8. Q: The AIS guidance does not appear to cover reused items (i.e., existing pipe fittings, used storage tanks, reusing existing valves). How should reused items be addressed?**

**A: The AIS guidance does not address reuse of items.** Reuse of items that would otherwise be covered by AIS is acceptable provided that the item(s) was originally purchased prior to January 17, 2014, the reused item(s) is not substantially altered from original form/function, and any restoration work that may be required does not include the replacement or addition of foreign iron or steel replacement parts. EPA recommends keeping a log of these reused items by including them on the assistance recipient's de minimis list, and stating therein that these items are reused products. The donation of new items (such as a manufacturer waiving cost for certain delivered items because of concerns regarding the origin of a new product) is not, however, considered reuse.

**9. Q: What does "time needed" mean in the AIS guidance, in reference to the definition of "Reasonably Available Quantity"?**

September 10, 2014

**A:** For considering whether a product would meet reasonably available quantity, "time needed" is based on the construction schedule. If the item is delayed and there is substantial impact on the overall construction schedule, this would not be according to the "time needed."

**10. Q:** If a product is not specifically included on the list of AIS covered products, must it comply with AIS?

**A:** Possibly. The AIS requirements include a list of specifically covered products, one of which is construction materials, a broad category of potential products. For construction materials, EPA's AIS guidance includes a set of example items that it considers construction materials composed primarily of iron and steel and covered by the Act. This example list in the guidance is not an all-inclusive list of potential construction materials. However, the guidance also includes a list of items that EPA specifically does not consider construction materials, generally those of electrical or complex-mechanical nature. If a product is similar to the ones in the non-construction material list (and it is also not specifically listed by the Act), it is not a construction material. For all other items specifically included in the Act, coverage is generally self-evident.

**11. Q:** If a listed iron and steel product is used as a part for an assembled product that is non-domestic, do the AIS requirements apply?

**A:** AIS requirements only apply to the final product as delivered to the work site and incorporated into the project. Other assemblies, such as a pumping assembly or a reverse osmosis package plant, are distinct products not listed and do not need to be made in the U.S. or composed of all U.S. parts. Therefore, for the case of a non-covered product used in a larger non-domestic assembly, the components, even if specifically listed in the Consolidated Appropriations Act, do not have to be domestically produced.

**12. Q:** Is cast iron excluded from the AIS requirements?

**A:** No. Cast iron products that fall under the definition of iron and steel products must comply with the AIS requirements.

**13. Q:** The guidance states that "construction materials" do not include mechanical equipment, but then identifies ductwork as a construction material. Please clarify.

**A:** Ductwork is not mechanical equipment, therefore it is considered a "construction material" and must comply with the AIS requirements.

**14. Q:** Do "meters" mentioned in EPA's guidance as non-construction materials include both flow meters and water meters?

**A:** Yes. "Meters" includes any type of meter, including: flow meters, wholesale meters, and water meters/service connections.

September 10, 2014

**15. Q: Must coiled steel be domestic?**

**A: Yes.** Coiled steel is an intermediate product used in the production of steel pipe and must come from a U.S. source or subject to a waiver in order to comply with the AIS requirements.

**16. Q: Are pig iron, direct reduced iron (DRI), and ingot considered raw materials?**

**A: No.** These are considered intermediate products used in the production of iron or steel and must come from a U.S. source or subject to a waiver in order to comply with the AIS requirements.

**17. Q: Can assistance recipients rely on a marking that reads, "Made in the USA," as evidence that all processes took place in the U.S.?**

**A: No.** This designation is not consistent with our requirements that all manufacturing processes of iron and steel products must take place in the U.S.

**18. Q: When determining what constitutes a product made "primarily" of iron or steel, who makes this determination?**

**A: The manufacturer will show if its product qualifies as primarily made of iron or steel. The recipient should expect the manufacturer to provide documentation/certification that its product is AIS compliant.**

**19. Q: Do aerators need to be produced domestically in order to comply with AIS?**

**A: No.** Aerators, similar to pumps, are mechanical equipment that do not need to meet the AIS requirements. "Blowers/aeration equipment, compressors" are listed in EPA's guidance as non-construction materials.

**20. Q: Are Sluice and Slide Gates considered valves?**

**A: No.** Valves are products that are generally encased / enclosed with a body, bonnet, and stem. Examples include enclosed butterfly, ball, globe, piston, check, wedge, and gate valves. Furthermore, "gates" (meaning sluice, slide or weir gates) are listed in EPA's guidance as non-construction materials.

#### **AIS PROCESS QUESTIONS**

**21. Q: Will notices of waiver applications be published in the federal register?**

**A: No.** Applications for waivers will be published on EPA's website ([http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)). EPA will provide 15 days for open public comment, as noted on the website.

September 10, 2014

**22. Q: Will states be collecting the step certification paper trail, as presented in the AIS guidance?**

**A. No.** Assistance recipients must maintain documentation of compliance with AIS. EPA recommends use of the step certification process. This process is a best practice and traces all manufacturing of iron and steel products to the U.S. If the process is used, the state does not have to collect the documentation. The documents must be kept by the assistance recipient and reviewed by the state during project reviews.

**23. Q: Why is it considered a best practice for states to conduct site visits, when it is the assistance recipient's responsibility to meet the AIS requirements?**

**A: It is both the assistance recipient's and the state's responsibility to ensure compliance with the AIS requirements.** The state is the recipient of a federal grant and must comply with all grant conditions, including a condition requiring that the AIS requirements be adhered to. Therefore, it is recommended that states conduct site visits of projects during construction and review documentation demonstrating the assistance recipient's proof of compliance.

**24. Q: Please further define the state's role in the waiver process.**

**A: The state's role in the waiver process is to review any waiver requests submitted to the state in order to ensure that all necessary information has been provided by the assistance recipient prior to forwarding the request to EPA.** If a state finds the request lacking, the state should work with the assistance recipient to help obtain complete information.

**25. Q: How much time does EPA have to evaluate the waiver during the evaluation step?**

**A: At a minimum, EPA is required to provide 15 days for open public comment.** There is no specific deadline or time limit for EPA to review waiver requests. Each waiver request will come with its own specific details and circumstances and may require a different amount of time for review and analysis. For example, public interest waivers in general may take longer to review than availability waivers which are typically more straightforward. However, EPA understands that construction may be delayed while waiting for a waiver and will make every effort to review and issue decisions on waiver requests in a timely manner.

#### **PROJECT QUESTIONS**

**26. Q: What if a project is funded by another funding entity (i.e., United States Department of Agriculture – Rural Development) where AIS is not required and begins construction after January 17, 2014 but then applies to the SRF to refinance the project? Are they ineligible?**

September 10, 2014

**A:** The project is not ineligible. AIS requirements will apply to any construction that occurs after the assistance agreement is signed, through the end of construction. If construction is complete, there is no retroactive application of the AIS requirements.

**27. Q:** If the assistance recipient can demonstrate through market research that the AIS requirement will exceed the 25 percent cost threshold, is the entire project exempt from the AIS requirement?

**A:** If the waiver application shows that the inclusion of American iron and steel products causes the entire cost of the project to increase by more than 25 percent, a waiver may be granted for the entirety of the project.

**28. Q:** Can the recipient use non-SRF funds to pay for the non-compliant item.

**A:** No. It is not acceptable to use non-SRF funds to pay for a non-compliant item. The Consolidated Appropriations Act of 2014 requires that all iron and steel products, no matter the source of funding, must be made in the U.S. if SRF funds are used in the project.

**29. Q:** What constitutes "satisfactory quality" as defined in the AIS guidance, in reference to the availability waiver process.

**A:** "Satisfactory quality" means the product meets the project design specifications. A waiver may be granted if a recipient determines that the project plans and design would be compromised because there are no American made products available that meet the project design specifications.

**30. Q:** The guidance states that the AIS requirement applies to any project "funded in whole or in part" by an SRF. Where is this in the Act?

**A:** The Act states that, "None of the funds made available by a ... [State SRF program] ... shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States." This sentence clearly states that no SRF program may use its funds for a project unless all of the iron and steel products used in the project are made in the U.S. This is true even if only \$1 of SRF funding is used in the project.

**31. Q:** There is always an expectation on the part of an assistance recipient that the construction phase of a planning and/or design only loan will be funded through the SRF. If the original planning and/or design only loan was executed prior to January 17, 2014, does this mean the entire project will be exempt from the AIS requirement?

**A:** If the original loan includes construction, and was executed prior to January 17, 2014, then the AIS provision does not apply to the project. If the original loan was only for planning and/or design, then a written commitment or documented "expectation" is needed to show exemption from the

September 10, 2014

requirements. Appearance on a priority list in an Intended Use Plan along with written reasonable assurance from the state that the recipient will receive SRF funding for project construction could provide sufficient evidence of "expectation of funding".

32. Q: What if there has been a change order or redesign requiring new plans and specifications to be approved and they were approved after January 17, 2014: does the project now have to comply with AIS?

A: In most cases, no. Change orders are typically small enough changes that the original plan and specification date will still hold true. For example, if a pipe alignment has to be changed for a block or two due to unforeseen conditions, but new plans and specifications had to be submitted for this section of the project, then that could be considered a minor change. However, if there has been a major redesign, perhaps the whole project had to be redesigned starting from scratch, then the new plans and specification approval date would apply.

33. Q: What if the bids on a project with plans and specifications approved before January 17, 2014 but the loan is signed after January 17, 2014 come in low, and there is significant funding remaining in the loan agreement, so the community designs a second project with the remaining funds: does that project have to comply with the AIS requirements?

A: If the second project is closely related in purpose, place and time to the first project, then the second project would be exempt from the AIS requirements. It is the assistance recipient's responsibility (with state oversight) to show that a project is closely related, or not, in purpose, place and time.

34. Q: What if the assistance agreement was signed after January 17, 2014, state approval of plans for the first phase of the project was in place prior to January 17, 2014, but state approval of the plans for the second phase of the project was received after January 17, 2014?

A: In such a case, the AIS provision would not apply to the first phase of the project. If the second phase of the project is considered the same project as the first phase, due to its close relation in purpose, place and time, the entire project may be exempt. It is the assistance recipient's responsibility (with state oversight) to show that phases of a project is closely related, or not, in purpose, place and time.

35. Q: Do products purchased through procurement-only contracts have to be comply with AIS?

A: Yes. For projects funded by SRF, the products procured under any form of contract must comply with AIS. A procurement-only contract generally involves the bulk purchase of common items (such as pipe, concrete, and/or pumps) of independent timing from a set of planned projects. If products which are purchased through a procurement-only contract are being installed under another contract, the procurement-only contract would probably not be considered a separate project in purpose, place and time; and therefore, would have to comply with the AIS requirements.

March 2015

## American Iron & Steel Requirement for the Clean Water and Drinking Water State Revolving Funds

### Q&A Part 3

*For CWSRF and DWSRF: On January 17, 2014, Public Law 113-76, the "Consolidated Appropriations Act, 2014," was enacted and included an American Iron and Steel requirement for the Clean Water and Drinking Water State Revolving Fund programs through the end of fiscal year 2014. Since then, the AIS requirement has continued for both programs, but through different statutes, with a few changes as described in the questions and answers provided below.*

*For CWSRF: On June 10, 2014, the Water Resources Reform and Development Act amended the Clean Water Act to include permanent requirements for the use of AIS products in CWSRF assistance agreements. Section 608 of the CWA now contains requirements for AIS that repeat those of the Consolidated Appropriations Act, 2014. All CWSRF assistance agreements must comply with Section 608 of the CWA for implementation of the permanent AIS requirement.*

*For DWSRF: On December 16, 2014, the President signed Public Law 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015," which provides fiscal year 2015 full-year appropriations through September 30, 2015. This law continues the requirement for the use of AIS products in DWSRF assistance agreements through September 30, 2015.*

### CWSRF PROGRAM

1. **Q:** The Water Resources Reform and Development Act amended the Clean Water Act to include permanent requirements for the use of AIS for CWSRF funded assistance agreements. Does the CWA include an exemption for plans and specifications approved prior to the enactment of the legislation similar to the exemption included in the Consolidated Appropriations Act (CAA) 2014?

**A:** Yes. The WRRDA amendment to the CWA, which included AIS requirements, included a similar exemption as the CAA 2014. For any CWSRF assistance agreement signed on or after October 1, 2014, if the plans and specifications were approved prior to June 10, 2014 (the enactment of WRRDA), then the project is exempt from AIS requirements. For assistance agreements signed prior to October 1, 2014, the previous dates in the CAA 2014 apply (see March 20, 2014, AIS guidance document).

If a project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the plans and specifications approval date for purposes of this exemption in Section 608 (f).

The following table summarizes AIS exemptions based on the plans and specifications approval date for CWSRF funded projects.

3/16/2015

CWSRF AIS Project Exemption Based on Plans and Specifications Approval Date		
<u>Assistance Agreement Signed:</u>	<u>Exempt from AIS if Plans and Specifications Were Approved Before:</u>	<u>Basis for Exemption:</u>
1/17/2014 through 9/30/2014	4/15/2014	<ul style="list-style-type: none"> <li>• Consolidated Appropriations Act 2014</li> <li>• National waiver signed 4/15/2014*</li> </ul>
On or after 10/1/2014	6/10/2014	<ul style="list-style-type: none"> <li>• Clean Water Act Section 608</li> </ul>

\* To be covered by the national waiver, the plans and specifications had to be submitted to the state prior to 1/17/2014

**2. Q: Does the AIS requirement apply to refinanced CWSRF projects?**

A: Yes, in some cases. If a project began construction, financed from a non-CWSRF source prior to June 10, 2014, but is refinanced through a CWSRF assistance agreement executed on or after October 1, 2014, AIS requirements will apply to all construction that occurs on or after June 10, 2014, through completion of construction, unless engineering plans and specifications were approved by the responsible state agency prior to June 10, 2014. For CWSRF projects funded on or after October 1, 2014, there is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to June 10, 2014.

**DWSRF PROGRAM**

**3. Q: The Consolidated and Further Continuing Appropriations Act 2015 continues the AIS requirements for DWSRF funded assistance agreements. Does the Act include an exemption for plans and specifications approved prior to the enactment of the legislation, similar to the exemption included in the Consolidated Appropriations Act (CAA) 2014?**

A: Yes. The Consolidated and Further Continuing Appropriations Act 2015 includes a similar exemption as the CAA 2014. For any assistance agreement signed on or after December 16, 2014 (the enactment of the Act), if the plans and specifications were approved prior to December 16, 2014, then the project is exempt from the AIS requirements. For assistance agreements signed prior to December 16, 2014, the previous dates in the CAA 2014 apply (see March 20, 2014 AIS guidance document).

If a project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the plans and specifications approval date for purposes of the exemption in Section 424(f).

4. Q: Do DWSRF assistance agreements signed during the time period between September 30, 2014, and December 16, 2014, still have to comply with the AIS requirements?

A: Yes, The Continuing Appropriations Resolution 2015 was signed on September 19, 2014, which extended funding for the DWSRF with the same conditions that were made applicable by the language in the Fiscal Year 2014 appropriations, including the requirement for the use of American Iron and Steel products in projects receiving financial assistance from the DWSRF. Therefore, all assistance agreements starting October 1, 2014, through the enactment of the Consolidated and Further Continuing Appropriations Act 2015 (signed December 16, 2014), must include the AIS requirements. However, if the plans and specifications for any of these projects were approved prior to April 15, 2014 (the date the national waiver was signed), then the project is exempt from the AIS requirements.

The following table summarizes AIS exemptions based on the plans and specifications approval date for DWSRF funded projects.

<b>DWSRF AIS Project Exemption Based on Plans and Specifications Approval Date</b>		
<u>Assistance Agreement Signed:</u>	<u>Exempt from AIS if Plans and Specifications Were Approved Before:</u>	<u>Basis for Exemption:</u>
1/17/2014 through 9/30/2014	4/15/2014	<ul style="list-style-type: none"> <li>• Consolidated Appropriations Act 2014</li> <li>• National waiver signed 4/15/2014*</li> </ul>
10/1/2014 through 12/15/2014	4/15/2014	<ul style="list-style-type: none"> <li>• Continuing Appropriations Resolution 2015 (continued CAA 2014 requirements)**</li> <li>• National waiver signed 4/15/2014*</li> </ul>
12/16/2014 through 9/30/2015	12/16/2014	<ul style="list-style-type: none"> <li>• Consolidated and Further Continuing Appropriations Act 2015</li> </ul>

\* To be covered by the national waiver, the plans and specifications had to be submitted to the state prior to 1/17/2014

\*\* Following the first continuing resolution, there were two additional CRs to fill the gap between 12/11/2014 and 12/16/2014

5. Q: Does the AIS requirement apply to refinanced DWSRF projects?

A: Yes, in some cases. If a project began construction, financed from a non-DWSRF source prior to December 16, 2014, but is refinanced through a DWSRF assistance agreement executed on or after December 16, 2014, AIS requirements will apply to all construction that occurs on or after December 16, 2014, through completion of construction, unless engineering plans and

specifications were approved by the responsible state agency prior to December 16, 2014. For DWSRF projects funded on or after December 16, 2014, there is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to December 16, 2014.

**BOTH CWSRF AND DWSRF PROGRAMS**

6. **Q: If a coating is applied to the external surface of a domestic iron or steel component, and the application takes place outside of the United States, would the product be compliant under the AIS requirements?**

**A: Yes.** The product would still be considered a compliant product under AIS requirements. Any coating processes that are applied to the external surface of iron and steel components that would otherwise be AIS compliant would not disqualify the product from meeting the AIS requirements regardless of where the coating processes occur, provided that final assembly of the product occurs in the United States.

The exemption above only applies to coatings on the *external surface* of iron and steel components. It does not apply to coatings or linings on internal surfaces of iron and steel products, such as the lining of lined pipes. All manufacturing processes for lined pipes, including the application of pipe lining, must occur in the United States for the product to be compliant with AIS requirements.



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

MAR 25 2019

OFFICE OF WATER

**MEMORANDUM**

**SUBJECT:** Implementation of Drinking Water State Revolving Fund (DWSRF) – Related Safe Drinking Water Act (SDWA) Amendments in America’s Water Infrastructure Act (AWIA) of 2018

**FROM:** Jennifer L. McLain, Acting Director  
Office of Ground Water and Drinking Water

A handwritten signature in black ink, appearing to read "Jennifer L. McLain".

**TO:** Water Division Directors  
Regions 1 – 10

The purpose of this memorandum is to assist the EPA and states in implementing changes to the DWSRF Program enacted through the SDWA amendments provided in the AWIA of 2018. The attached document outlines DWSRF-related amendments to SDWA as mandated by AWIA and provides a plain language explanation of each provision.

The DWSRF is one of the nation’s most important investments in public health protection. Through state fiscal year 2018, states have signed more than \$38 billion worth of loans and other funding agreements with communities to build, repair, and improve drinking water infrastructure. The below-market financing available through the DWSRF saves millions of local dollars while expanding access to safe drinking water in homes, schools, and businesses.

The DWSRF set-asides have also played a critical role in public health protection by facilitating the investment of more than \$3.2 billion over the program’s lifespan towards operator certification, water system capacity development, and source water protection, as well as other activities that support safe drinking water.

State DWSRF managers should take particular note of AWIA’s changes to the SDWA that authorize extended infrastructure loan terms, require the provision of additional subsidy to state-defined disadvantaged communities, and expand source water protection-related eligibilities under the Local Assistance set-aside. These provisions will provide critical support to low-income communities and promote preventative activities to protect the water supply.

These changes take immediate effect. Please distribute this memorandum to state DWSRF program managers (including both PWSS and financial managers) as soon as possible. Questions may be directed to Anita Thompkins, Drinking Water Protection Division Director, at [Thompkins.Anita@epa.gov](mailto:Thompkins.Anita@epa.gov).

Attachment

## **Implementation of DWSRF-Related Amendments in America's Water Infrastructure Act of 2018**

On October 23, 2018, the President signed America's Water Infrastructure Act of 2018 into law. Among its provisions are amendments to the Safe Drinking Water Act §1452 (42 U.S.C. 300j-12) that provide changes to the DWSRF program, as summarized in the section-specific explanations below. Text in *italics* is new and text in ~~strikethrough~~ was deleted.

### **AWIA §2015(a): Use of Funds**

As amended, the SDWA §1452(a)(2)(B) now states:

#### **(B) Limitation**

Financial assistance under this section may be used by a public water system only for expenditures (including expenditures for planning, design, *siting*, and associated preconstruction activities, ~~including activities relating to the siting or for replacing or rehabilitating aging treatment, storage, or distribution facilities of the facility~~ *public water systems*, but not including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 300g-1 of this title or otherwise significantly further the health protection objectives of this subchapter.

*Explanation:* This section explicitly makes replacing or rehabilitating aging treatment, storage or distribution systems DWSRF-eligible. These activities were DWSRF-eligible prior to the AWIA amendments, per the DWSRF regulations,<sup>1</sup> and are now spelled out in the SDWA. States may continue using DWSRF funds for these activities.

### **AWIA §2015(b): Prevailing Wages**

AWIA created a new SDWA §1452(a)(5), stating:

#### **(5) Prevailing wages**

*The requirements of section 300j-9(e) of this title shall apply to any construction project carried out in whole or in part with assistance made available by a State loan fund.*

*Explanation:* This section places the existing Davis-Bacon wage rate requirement for DWSRF-funded infrastructure projects into the DWSRF-authorizing section of the SDWA. Congress previously made this a permanent requirement via the Consolidated Appropriations Act of 2012.<sup>2</sup> Therefore, states must continue to ensure that DWSRF infrastructure assistance recipients comply with the Davis-Bacon Act.

### **AWIA §2015(c): Assistance for Disadvantaged Communities**

As amended, the SDWA §1452(d) now states:

#### **(1) Loan subsidy**

Notwithstanding any other provision of this section, in any case in which the State makes a loan pursuant to subsection (a)(2) to a disadvantaged community or to a community that the State

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<sup>1</sup> 40 CFR §35.3520(b) and (c)

<sup>2</sup> Consolidated Appropriations Act, 2012 (Pub. L. 112-74)

expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal).

**(2) Total amount of subsidies**

For each fiscal year, *of the amount of the capitalization grant received by the State for the year*, the total amount of loan subsidies made by a State pursuant to paragraph (1)

*(A) may not exceed ~~30~~ 35 percent of the amount of the capitalization grant received by the State for the year, and*

*(B) to the extent that there are sufficient applications for loans to communities described in paragraph (1), may not be less than 6 percent.*

**(3) "Disadvantaged community" defined**

In this subsection, the term "disadvantaged community" means the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.

*Explanation:* This section requires states to use at least 6 percent but no more than 35 percent of the capitalization grant amount for additional subsidy for state-defined Disadvantaged Communities. Before AWIA, the floor was zero percent and the ceiling was 30 percent in the SDWA. This requirement pertains to capitalization grants awarded by the EPA to states after October 23, 2018. For most states, this is the Federal Fiscal Year 2019 grant.

Note that the Disadvantaged Community Additional Subsidy authority has existed since the DWSRF's inception and is distinct from the additional subsidy authority Congress provided under recent appropriations acts. This authority, typically titled the "Congressional Additional Subsidy Authority," mandated that states provide a certain percentage of their capitalization grant as additional subsidy to any DWSRF-eligible recipient. If Congress adds this authority to future appropriations acts, the EPA will issue guidance to explain the interaction between these two distinct subsidy authorities.

States must establish or continue to implement a Disadvantaged Community Program and solicit applications from water systems. The SDWA allows for the possibility that states may not meet the provision; note that the law text above says, "to the extent there are sufficient applications for loans...". States unable to find a sufficient number of disadvantaged community projects should explain in their Intended Use Plan (IUP) and Annual/Biennial Report why the provision was not met and what they are doing to ensure that this provision is met in future years (e.g., marketing, outreach, technical assistance).

As a reminder, under the Disadvantaged Community Additional Subsidy authority, subsidies must be in the form of a loan (e.g., loans which include principal forgiveness, negative interest rate loans).<sup>3</sup> This provision does not authorize grants. Further, fees included as principal in a loan cannot be assessed on a disadvantaged community receiving additional subsidy under the Disadvantaged Community Additional Subsidy authority.<sup>4</sup>

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<sup>3</sup> 40 CFR §35.3525(b)(1)

<sup>4</sup> 40 CFR §35.3530(b)(3)

EPA Regions must verify whether a state satisfies the mandate to use between 6 and 35 percent of the capitalization grant amount for the Disadvantaged Community Additional Subsidy at the time of grant application and during reviews.

### **AWIA §2015(d): Types of Assistance**

As amended, the SDWA §1452(f) now states:

#### **(f) Types of assistance**

Except as otherwise limited by State law, the amounts deposited into a State loan fund under this section may be used only-

(1) to make loans, on the condition that-

(A) the interest rate for each loan is less than or equal to the market interest rate, including an interest free loan;

(B) principal and interest payments on each loan will commence not later than ~~1 year~~ 18 months after completion of the project for which the loan was made, and ~~each loan will be fully amortized not later than 20 years after the~~;

(C) each loan will be fully amortized not later than 30 years after the completion of the project, except that in the case of a disadvantaged community (as defined in subsection (d)(3)) a State may provide an extended term for a loan, if the extended term-

(i) terminates not later than the date that is ~~30~~ 40 years after the date of project completion; and

(ii) does not exceed the expected design life of the project;

~~(C)~~(D) the recipient of each loan will establish a dedicated source of revenue (or, in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loan; and

~~(D)~~(E) the State loan fund will be credited with all payments of principal and interest on each loan;

(2) to buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the State at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(3) to guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the State loan fund; and

(5) to earn interest on the amounts deposited into the State loan fund.

***Explanation:*** This section extends the maximum-authorized DWSRF loan amortization period up to 30 years for any DWSRF-eligible recipient or up to 40 years for state-defined disadvantaged communities, or design life, whichever is shorter. Before AWIA, the maximum amortization period was 20 or 30 years, respectively. This section also extends the authorized loan repayment initiation up to 18 months after project completion, an increase from the pre-AWIA authorization of 12 months. Note that these changes apply only to the §1452(f)(1) authorization to *make loans* with the DWSRF.

The EPA considers the SDWA's DWSRF "design life" terminology to be functionally equivalent to the Clean Water Act's "useful life" terminology used to define maximum loan amortization terms in the Clean Water State Revolving Fund.<sup>5</sup>

Though loan terms may now extend up to 30 years for any recipient or up to 40 years for disadvantaged communities, states must only make loan terms not exceeding the design life of the infrastructure for *any* community. This principal is fundamental to effective utility management and sound financial capacity.

States make the determination for "design life" of a project using best professional engineering judgement. In practice, design life refers to major components of a water system. If components financed by a DWSRF loan or the purchase of a debt obligation have various design lives, applying a weighted average is a simple way to derive the maturity of the loan or the debt obligation.

For **programmatic financing**, which typically involves a single DWSRF loan agreement for several ready-to-proceed projects in a given year, specific projects are known, and the projects' design lives are determinable. **Portfolio financing** is a DWSRF program's commitment to financing projects over several years, usually from a utility's capital improvement plan. The out-year projects may be in the planning and design stage. For practical purposes, the design life may determine when those projects are finally ready to proceed and the loan agreement(s) is executed.

### **AWIA §2015(e): Needs Survey**

As amended, the SDWA §1452(h) now states:

#### **(h) Needs survey**

*(1) The Administrator shall conduct an assessment of water system capital improvement needs of all eligible public water systems in the United States and submit a report to the Congress containing the results of the assessment within 180 days after August 6, 1996, and every 4 years thereafter.*

*(2) Any assessment conducted under paragraph (1) after October 23, 2018, shall include an assessment of costs to replace all lead service lines (as defined in section 300j-19b(a)(4) of this title) of all eligible public water systems in the United States, and such assessment shall describe separately the costs associated with replacing the portions of such lead service lines that are owned by an eligible public water system and the costs associated with replacing any remaining portions of such lead service lines, to the extent practicable.*

**Explanation:** The quadrennial Needs Survey shows the capital improvement need for DWSRF-eligible public water system infrastructure over the next 20 years.

This section requires the EPA to include an estimate of replacement costs for all lead service lines, public and private, in Needs Surveys conducted after October 23, 2018. Complete service line replacement is defined by replacing pipes up to the point of premise plumbing. Service lines consist of a publicly-owned section and a privately-owned section. The publicly owned portion of a service line is

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<sup>5</sup> Clean Water Act §603(d)(1)(A)

the section connected to the water main and running up to the property line. The privately-owned portion is the section running from the property line to connection to the premise plumbing (generally at an isolation valve). Replacement of the entire service line is DWSRF-eligible. Continuing from the publicly-owned portion of the pipe often found under a street, the service line from the public water main to the point at which it connects with premise plumbing is DWSRF-eligible. Premise plumbing is defined by the pipes found on the other side of the isolation valve. That connection may be inside or outside of homes and other buildings. Note that premise plumbing is not eligible for DWSRF funding.

**AWIA §2015(f): Other Authorized Activities, and**  
**AWIA §2002: Clean, Safe, Reliable Water Infrastructure**

As amended, the SDWA §1452(k) now states:

**(k) Other authorized activities**

**(1) In general**

Notwithstanding subsection (a)(2), a State may take each of the following actions:

(A) Provide assistance, only in the form of a loan, to one or more of the following:

(i) Any public water system described in subsection (a)(2) to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations.

(ii) Any community water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 300j-13 of this title, in order to facilitate compliance with national primary drinking water regulations applicable to the system under section 300g-1 of this title or otherwise significantly further the health protection objectives of this subchapter. Funds authorized under this clause may be used to fund only voluntary, incentive-based mechanisms.

(iii) Any community water system to provide funding in accordance with section 300j-14(a)(1)(B)(i) of this title.

(B) Provide assistance, including technical and financial assistance, to any public water system as part of a capacity development strategy developed and implemented in accordance with section 300g-9(c) of this title.

(C) Make expenditures from the capitalization grant of the State ~~for fiscal years 1996 and 1997~~ to delineate, assess, *and update assessments* for source water protection areas in accordance with section 300j-13 of this title, except that funds set aside for such expenditure shall be obligated within 4 fiscal years.

(D) Make expenditures from the fund for the establishment and implementation of wellhead protection programs under section 300h-7 of this title *and for the implementation of efforts (other than actions authorized under subparagraph (A)) to protect source water in areas delineated pursuant to section 300j-13 of this title.*

**(2) Limitation**

For each fiscal year, the total amount of assistance provided and expenditures made by a State under this subsection may not exceed 15 percent of the amount of the capitalization grant received by the State for that year and may not exceed 10 percent of that amount for any one of the following activities:

- (A) To acquire land or conservation easements pursuant to paragraph (1)(A)(i).
- (B) To provide funding to implement voluntary, incentive-based source water quality protection measures pursuant to clauses (ii) and (iii) of paragraph (1)(A).
- (C) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).
- (D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C).
- (E) To make expenditures to establish and implement wellhead protection programs, and to implement efforts to protect source water, pursuant to paragraph (1)(D).

***Explanation:*** This section allows states to fund delineation and assessment of source water protection areas, and to update existing source water protection assessments, using the 15 percent Local Assistance and Other State Programs set-aside. That authorization had previously expired with the 1997 capitalization grant funding. Further, states may use this set-aside to fund activities to implement source water protection more generally.

### **AWIA §2015(g): Best Practices for Administration of State Revolving Loan Funds**

AWIA created a new SDWA §1452(s), stating:

***(s) Best practices for State loan fund administration***

*The Administrator shall-*

- (1) collect information from States on administration of State loan funds established pursuant to subsection (a)(1), including-*
  - (A) efforts to streamline the process for applying for assistance through such State loan funds;*
  - (B) programs in place to assist with the completion of applications for assistance through such State loan funds;*
  - (C) incentives provided to public water systems that partner with small public water systems to assist with the application process for assistance through such State loan funds;*
  - (D) practices to ensure that amounts in such State loan funds are used to provide loans, loan guarantees, or other authorized assistance in a timely fashion;*
  - (E) practices that support effective management of such State loan funds;*
  - (F) practices and tools to enhance financial management of such State loan funds; and*
  - (G) key financial measures for use in evaluating State loan fund operations, including-*
    - (i) measures of lending capacity, such as current assets and current liabilities or undisbursed loan assistance liability; and*

- (ii) *measures of growth or sustainability, such as return on net interest;*
- (2) *not later than 3 years after October 23, 2018, disseminate to the States best practices for administration of such State loan funds, based on the information collected pursuant to this subsection; and*
- (3) *periodically update such best practices, as appropriate.*

**Explanation:** This section directs the EPA to conduct a best practices evaluation by October 23, 2021.

### **AWIA §2019: Report on Federal Cross-Cutting Requirements**

This section is part of AWIA and relates to the DWSRF, but not a new section of the SDWA.

#### **SEC. 2019. REPORT ON FEDERAL CROSS-CUTTING REQUIREMENTS.**

(a) **REPORT.**—*Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to Congress a report containing the results of a study, to be conducted in consultation with the Administrator of the Environmental Protection Agency, any State agency that has primary responsibility to enforce the requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.) in a State, and public water systems, to identify demonstrations of compliance with a State or local environmental law that may be substantially equivalent to any demonstration required by the Administrator for compliance with a Federal cross-cutting requirement.*

(b) **DEFINITIONS.** —*In this subsection:*

(1) **FEDERAL CROSS-CUTTING REQUIREMENT.**—*The term “Federal cross-cutting requirement” means a requirement of a Federal law or regulation, compliance with which is a condition on receipt of a loan or loan guarantee pursuant to section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12), that, if applied with respect to projects and activities for which a public water system receives such a loan or loan guarantee, would be substantially equivalent to a requirement of an applicable State or local law.*

(2) **PUBLIC WATER SYSTEM.** —*The term “public water system” has the meaning given that term in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f).*

**Explanation:** This section directs the Government Accountability Office (GAO) to study whether state or local environmental cross-cutter laws “may be substantially equivalent” to those required by Congress and the EPA for DWSRF-funded infrastructure projects. Congress directs the GAO to work with the state drinking water primacy agencies and public water systems on this study and the report is due by October 23, 2019 (one year after AWIA’s enactment). The scope of this study may include all cross-cutters. The Davis-Bacon prevailing wage rates may be of particular interest to GAO, as some states and localities have prevailing wage rates which may equal or exceed those mandated by the Davis-Bacon Act.

### **AWIA §2020: Assistance for Areas Affected by Natural Disasters**

This section is part of AWIA and relates to the DWSRF, but not a new section of the SDWA.

(a) **DEFINITIONS.**—*In this section:*

*(1) COMMUNITY WATER SYSTEM.—The term “community water system” has the meaning given such term in section 1401(15) of the Safe Drinking Water Act (42 U.S.C. 300f(15)).*

*(2) ELIGIBLE STATE.—The term “eligible State” means a State, as defined in section 1401(13)(B) of the Safe Drinking Water Act (42 U.S.C. 300f(13)(B)).*

*(3) ELIGIBLE SYSTEM.—The term “eligible system” means a community water system—*

*(A) that serves an area for which, after January 1, 2017, the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)—*

*(i) has issued a major disaster declaration; and*

*(ii) provided disaster assistance; or*

*(B) that is capable of extending its potable drinking water service into an underserved area.*

*(4) NATIONAL PRIMARY DRINKING WATER REGULATION.—The term “national primary drinking water regulation” means a national primary drinking water regulation under section 1412 of the Safe Drinking Water Act (42 U.S.C. 300g-1).*

*(5) UNDERSERVED AREA.—The term “underserved area” means a geographic area in an eligible State that—*

*(A) is served by a community water system serving fewer than 50,000 persons where delivery of, or access to, potable water is or was disrupted; and*

*(B) received disaster assistance pursuant to a declaration described in paragraph (3)(A).*

***(b) STATE REVOLVING LOAN FUND ASSISTANCE.—***

*(1) IN GENERAL.—An eligible State may use funds provided pursuant to subsection (e)(1) to provide assistance to an eligible system within the eligible State for the purpose of restoring or increasing compliance with national primary drinking water regulations in an underserved area.*

*(2) INCLUSION.—*

*(A) ADDITIONAL SUBSIDIZATION.—With respect to assistance provided under paragraph (1), an eligible system shall be eligible to receive loans with additional subsidization (including forgiveness of principal, negative-interest loans, or grants (or any combination thereof)) for the purpose described in paragraph (1).*

*(B) NONDESIGNATION.—Assistance provided under paragraph (1) may include additional subsidization, as described in subparagraph (A), even if the service area of the eligible system has not been designated by the applicable eligible State as a disadvantaged community pursuant to section 1452(d)(3) of the Safe Drinking Water Act (42 U.S.C. 300j-12(d)(3)).*

*(c) EXCLUSION.—Assistance provided under this section shall not include assistance for a project that is financed (directly or indirectly), in whole or in part, with proceeds of any obligation issued after the date of enactment of this Act the interest of which is exempt from the tax imposed under chapter 1 of the Internal Revenue Code of 1986.*

*(d) NONDUPLICATION OF WORK.—An activity carried out pursuant to this section shall not duplicate the work or activity of any other Federal or State department or agency.*

**(e) ADDITIONAL DRINKING WATER STATE REVOLVING FUND CAPITALIZATION GRANTS.—**

*(1) IN GENERAL.—There is authorized to be appropriated to the Administrator of the Environmental Protection Agency \$100,000,000 to provide additional capitalization grants pursuant to section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) to eligible States, to be available—*

*(A) for a period of 24 months beginning on the date on which the funds are made available for the purpose described in subsection (b)(1); and*

*(B) after the end of such 24-month period, until expended for the purpose described in paragraph (3) of this subsection.*

*(2) SUPPLEMENTED INTENDED USE PLANS.—*

*(A) OBLIGATION OF AMOUNTS.—Not later than 30 days after the date on which an eligible State submits to the Administrator a supplemental intended use plan under section 1452(b) of the Safe Drinking Water Act (42 U.S.C. 300j-12(b)), from funds made available under paragraph (1), the Administrator shall obligate to such eligible State such amounts as are appropriate to address the needs identified in such supplemental intended use plan for the purpose described in subsection (b)(1).*

*(B) PLANS.—A supplemental intended use plan described in subparagraph (A) shall include information regarding projects to be funded using the assistance provided under subsection (b)(1), including, with respect to each such project—*

*(i) a description of the project;*

*(ii) an explanation of the means by which the project will restore or improve compliance with national primary drinking water regulations in an underserved area;*

*(iii) the estimated cost of the project; and*

*(iv) the projected start date for the project.*

*(3) UNOBLIGATED AMOUNTS.—Any amounts made available to the Administrator under paragraph (1) that are unobligated on the date that is 24 months after the date on which the amounts are made available shall be available for the purpose of providing additional grants to States to capitalize State loan funds as provided under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12).*

*(4) APPLICABILITY.—*

*(A) IN GENERAL.—Except as otherwise provided in this section, all requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.) shall apply to funding provided under this section.*

*(B) INTENDED USE PLANS.—Section 1452(b)(1) of the Safe Drinking Water Act (42 U.S.C. 300j-12(b)(1)) shall not apply to a supplemental intended use plan under paragraph (2).*

*(C) STATE CONTRIBUTION.—For amounts authorized to be appropriated under paragraph (1), the matching requirements in section 1452(e) of the Safe Drinking Water Act (42 U.S.C. 300j-12(e)) shall not apply to any funds provided to the Commonwealth of Puerto Rico under this section.*

**Explanation:** This section authorizes \$100 million in supplemental DWSRF capitalization grants for states with community water systems serving an area for which the President issued a Stafford Act

emergency declaration after January 1, 2017 or systems that can extend service to an “underserved area” that received Stafford Act disaster assistance.

Congress has not yet provided an appropriation to fund these supplemental capitalization grants. Actual appropriation levels will be at Congressional discretion.

### **AWIA §2022: American Iron and Steel Products**

As amended, the SDWA §1452(a)(4)(A) now states:

#### **(4) American iron and steel products**

##### **(A) In general**

During ~~fiscal year 2017~~ *fiscal years 2019 through 2023*, funds made available from a State loan fund established pursuant to this section may not be used for a project for the construction, alteration, or repair of a public water system unless all of the iron and steel products used in the project are produced in the United States.

*Explanation:* This section extends the American Iron and Steel, or AIS, provision for DWSRF-funded projects through federal fiscal year 2023. See attached *Application of American Iron and Steel Requirements for Drinking Water State Revolving Fund Projects for Fiscal Years 2019 Through 2023* memorandum released on November 20, 2018, for more information.

### **AWIA §2023: Authorization of Appropriations**

As amended, the SDWA §1452(m) now states:

#### **(m) Authorization of appropriations**

(1) There are authorized to be appropriated to carry out the purposes of this section ~~\$599,000,000 for the fiscal year 1994 and \$1,000,000,000 for each of the fiscal years 1995 through 2003.~~

(A) *\$1,174,000,000 for fiscal year 2019;*

(B) *\$1,300,000,000 for fiscal year 2020; and*

(C) *\$1,950,000,000 for fiscal year 2021.*

(2) To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subsequent fiscal year ~~(prior to the fiscal year 2004)~~. Such sums shall remain available until expended.

*Explanation:* This section reauthorizes the DWSRF from federal fiscal years 2019 through 2021. Actual appropriation levels will be at Congressional discretion.

### **Other AWIA sections involving the DWSRF:**

#### **AWIA §2010: Additional Considerations for Compliance**

AWIA added additional sections under SDWA §1414 Subsection (h), “Consolidation incentive.” This section of SDWA involves drinking water regulation enforcement and is thus relevant to the DWSRF’s SDWA-compliance focus. AWIA added the following under Subsection (h):

##### **(3) Authority for mandatory assessment**

###### **(A) Authority**

*A State with primary enforcement responsibility or the Administrator (if the State does not have primary enforcement responsibility) may require the owner or operator of a public water system to assess options for consolidation, or transfer of ownership of the system, as described in paragraph (1), or other actions expected to achieve compliance with national primary drinking water regulations described in clause (i)(I), if-*

*(i) the public water system-*

*(I) has repeatedly violated one or more national primary drinking water regulations and such repeated violations are likely to adversely affect human health; and*

*(II)(aa) is unable or unwilling to take feasible and affordable actions, as determined by the State with primary enforcement responsibility or the Administrator (if the State does not have primary enforcement responsibility), that will result in the public water system complying with the national primary drinking water regulations described in subclause (I), including accessing technical assistance and financial assistance through the State loan fund pursuant to section 300j-12 of this title; or (bb) has already undertaken actions described in item (aa) without achieving compliance;*

*(ii) such consolidation, transfer, or other action is feasible; and*

*(iii) such consolidation, transfer, or other action could result in greater compliance with national primary drinking water regulations.*

***(B) Tailoring of assessments***

*Requirements for any assessment to be conducted pursuant to subparagraph (A) shall be tailored with respect to the size, type, and characteristics, of the public water system to be assessed.*

***(C) Approved entities***

*An assessment conducted pursuant to subparagraph (A) may be conducted by an entity approved by the State requiring such assessment (or the Administrator, if the State does not have primary enforcement responsibility), which may include such State (or the Administrator, as applicable), the public water system, or a third party.*

***(D) Burden of assessments***

*It is the sense of Congress that any assessment required pursuant to subparagraph (A) should not be overly burdensome on the public water system that is assessed.*

***(4) Financial assistance***

*Notwithstanding section 300j-12(a)(3) of this title, a public water system undertaking consolidation or transfer of ownership or other actions pursuant to an assessment completed under paragraph (3) may receive a loan described in section 300j-12(a)(2)(A) of this title to carry out such consolidation, transfer, or other action.*

***(5) Protection of nonresponsible system***

***(A) Identification of liabilities***

***(i) In general***

*An owner or operator of a public water system that submits a plan pursuant to paragraph (1) based on an assessment conducted with respect to such public water system under paragraph (3) shall identify as part of such plan-*

*(I) any potential and existing liability for penalties and damages arising from each specific violation identified in the plan of which the owner or operator is aware; and*

*(II) any funds or other assets that are available to satisfy such liability, as of the date of submission of such plan, to the public water system that committed such violation.*

**(ii) Inclusion**

*In carrying out clause (i), the owner or operator shall take reasonable steps to ensure that all potential and existing liabilities for penalties and damages arising from each specific violation identified in the plan are identified.*

**(B) Reservation of funds**

*A public water system that, consistent with the findings of an assessment conducted pursuant to paragraph (3), has completed the actions under a plan submitted and approved pursuant to this subsection shall not be liable under this subchapter for a violation of this subchapter identified in the plan, except to the extent to which funds or other assets are identified pursuant to subparagraph (A)(i)(II) as available to satisfy such liability.*

**(6) Regulations**

*Not later than 2 years after October 23, 2018, the Administrator shall promulgate regulations to implement paragraphs (3), (4), and (5).*

**Explanation:** This gives SDWA primacy agencies the authority to mandate that drinking water systems undertake a consolidation assessment if they meet the delineated threshold. Note that this section refers, on several occasions, to SDWA §300j-12. This is the authorizing section for the DWSRF (a.k.a. SDWA §1452). This new section of law explicitly allows states to use DWSRF funding for these consolidation assessments and actual consolidations. These were eligible prior to AWIA's passage and therefore states may continue funding these activities.

**AWIA §2012: Asset Management**

AWIA amended SDWA §1420, the section that requires the EPA and states to help water systems develop financial, managerial, and financial capacity. States may not provide DWSRF loan assistance to systems lacking these capabilities, unless such assistance will help them achieve capacity.<sup>6</sup> AWIA added the text in *italics* below to §1420 (c) and (d):

**(c) Capacity development strategy**

**(1) In general**

Beginning 4 years after August 6, 1996, a State shall receive only-

(A) 90 percent in fiscal year 2001;

(B) 85 percent in fiscal year 2002; and

(C) 80 percent in each subsequent fiscal year, of the allotment that the State is otherwise entitled to receive under section 300j-12 of this title (relating to State loan funds), unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity.

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<sup>6</sup> SDWA §1452(a)(3)(A)

**(2) Content**

In preparing the capacity development strategy, the State shall consider, solicit public comment on, and include as appropriate-

- (A) the methods or criteria that the State will use to identify and prioritize the public water systems most in need of improving technical, managerial, and financial capacity;
- (B) a description of the institutional, regulatory, financial, tax, or legal factors at the Federal, State, or local level that encourage or impair capacity development;
- (C) a description of how the State will use the authorities and resources of this subchapter or other means to-
  - (i) assist public water systems in complying with national primary drinking water regulations;
  - (ii) encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and
  - (iii) assist public water systems in the training and certification of operators;
- (D) a description of how the State will establish a baseline and measure improvements in capacity with respect to national primary drinking water regulations and State drinking water law; ~~and~~
- (E) an identification of the persons that have an interest in and are involved in the development and implementation of the capacity development strategy (including all appropriate agencies of Federal, State, and local governments, private and nonprofit public water systems, and public water system customers); *and*
- (F) *a description of how the State will, as appropriate-*
  - (i) encourage development by public water systems of asset management plans that include best practices for asset management; and*
  - (ii) assist, including through the provision of technical assistance, public water systems in training operators or other relevant and appropriate persons in implementing such asset management plans.*

**(3) Report**

Not later than 2 years after the date on which a State first adopts a capacity development strategy under this subsection, and every 3 years thereafter, the head of the State agency that has primary responsibility to carry out this subchapter in the State shall submit to the Governor a report that shall also be available to the public on the efficacy of the strategy and progress made toward improving the technical, managerial, and financial capacity of public water systems in the State, *including efforts of the State to encourage development by public water systems of asset management plans and to assist public water systems in training relevant and appropriate persons in implementing such asset management plans.*

**(4) Review**

The decisions of the State under this section regarding any particular public water system are not subject to review by the Administrator and may not serve as the basis for withholding funds under section 300j-12 of this title.

**(d) Federal assistance**

**(1) In general**

The Administrator shall support the States in developing capacity development strategies.

**(2) Informational assistance**

**(A) In general**

Not later than 180 days after August 6, 1996, the Administrator shall-

(i) conduct a review of State capacity development efforts in existence on August 6, 1996, and publish information to assist States and public water systems in capacity development efforts; and

(ii) initiate a partnership with States, public water systems, and the public to develop information for States on recommended operator certification requirements.

**(B) Publication of information**

The Administrator shall publish the information developed through the partnership under subparagraph (A)(ii) not later than 18 months after August 6, 1996.

**(3) Promulgation of drinking water regulations**

In promulgating a national primary drinking water regulation, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems.

**(4) Guidance for new systems**

Not later than 2 years after August 6, 1996, the Administrator shall publish guidance developed in consultation with the States describing legal authorities and other means to ensure that all new community water systems and new nontransient, noncommunity water systems demonstrate technical, managerial, and financial capacity with respect to national primary drinking water regulations.

**(5) Information on asset management practices**

*Not later than 5 years after October 23, 2018, and not less often than every 5 years thereafter, the Administrator shall review and, if appropriate, update educational materials, including handbooks, training materials, and technical information, made available by the Administrator to owners, managers, and operators of public water systems, local officials, technical assistance providers (including nonprofit water associations), and State personnel concerning best practices for asset management strategies that may be used by public water systems.*

***Explanation:*** This section mandates that states consider and include as appropriate in their state capacity development strategy, a description of how the state will encourage the development of asset management plans that include best practices and any training, technical assistance, and other activities that would help implement asset management plans. The section also mandates that primacy agencies include in their triennial capacity development reports to the Governor a description of how the state will encourage water systems to develop asset management plans, including the provision of technical assistance. This section also mandates that the EPA review and, if appropriate, update technical assistance and best practice documents for asset management.

Note that asset management plans (as part of planning and design) and related system software are eligible capital expenses as part of a DWSRF infrastructure loan. The development and implementation of asset management plans for communities are also eligible expenses under the 15% Local Assistance and Other State Programs set-aside (for Capacity Development).

**AWIA §4201: WIFIA Reauthorization and Innovative Financing for State Loan Funds**

This section adds additional flexibilities for state DWSRF programs to utilize funding from the WIFIA program.