

MEMORANDUM

SUBJECT: Nationwide waiver of Section 436 of P.L. 113-76, Consolidated Appropriations Act (CAA), 2014

FROM: Nancy N. Stoner, Acting Assistant Administrator
Office of Water

TO: Water Management Division Directors
Regions I - X

The EPA is hereby granting a nationwide waiver of the American Iron and Steel requirement of Section 436 of the CAA under the authority of Section 436(b)(1) (public interest waiver) for eligible projects that had engineering plans and specifications submitted to an appropriate state agency prior to and including January 17, 2014, the date of enactment of the CAA, and approved between and including January 17, 2014, and the date of this waiver, where the state agency that approved such plans and specifications did so under the normal course of business for that agency. This action permits the use of non-domestic iron and steel products in such projects funded by a Clean or Drinking Water State Revolving Fund that may otherwise be prohibited under section 436.

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 national waiver.

The basis for the nationwide waiver is that due to the uncertainty about whether an American Iron and Steel requirement would be included in this year's appropriation, potential assistance recipients did not have the opportunity to plan for a possible American Iron and Steel requirement. Until detailed guidance was issued, potential assistance recipients were unable to solicit bids from construction firms with appropriate definitions of key terms contained in the CAA language. Additionally, projects that submitted engineering plans and specifications prior to and including January 17, 2014, without knowledge of the American Iron and Steel requirement, and with the anticipation that such plans would be quickly approved, but such approval did not occur until on or after January 17, 2014, would be required to redesign elements of the project, investigate potential domestic products, revise engineering drawings and bid specifications, and

resubmit such plans and specifications for approval, thereby delaying the initiation of construction substantially. Those projects which do not require approved plans and specifications, but were bid prior to the guidance being issued, also could be required to rebid the project or submit change orders to comply with the new requirements, which would also delay initiation of construction.

The imposition of CAA's American Iron and Steel requirement on projects eligible for SRF assistance whose assistance applicants had submitted complete engineering plans and specifications prior to and including January 17, 2014, the date on which those requirements were imposed, and had such plans and specifications approved prior to and including the date on which this waiver is signed, would require the time-consuming and expensive redesign of those projects. Specifically, those projects that can show a reasonable basis for the submission of plans and specification prior to the passage of the CAA would be harmed by the imposition of these requirements post submission. This imposition would conflict with both EPA's, as well as the states', interest in providing funding to eligible recipients in an expeditious and efficient manner, as required by the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). Project delays would increase the time necessary to comply with CWA and SDWA requirements and adversely impact the protection of public health and the environment.

CSA Section 436(b)(1) authorized the Administrator to waive the requirements of Section 1436(a) in any case or category of cases in which she finds that applying subsection (a) would be inconsistent with the public interest. Therefore, for the foregoing reasons, imposing American Iron and Steel requirements on projects that submitted engineering plans and specifications to an appropriate state agency for approval, or the bid advertisement date for a project that does not require approved engineering plans and specifications, prior to and including January 17, 2014, and approved between and including January 17, 2014, through the date on which this waiver was signed, is not in the public interest.

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