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

FEB 18 2015

OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: Short-Term National Product Waiver for Stainless Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles for State Revolving Fund Projects

FROM: Kenneth J. Kopocis
Deputy Assistant Administrator

The U.S. Environmental Protection Agency is hereby granting a national product waiver pursuant to the "American Iron and Steel" provisions of the Clean Water Act and Public Law 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015."[1] The waiver permits the use of non-domestically produced stainless steel nuts and bolts in bolting-type pipe couplings, restraints, joints, flanges and repair saddles in iron and steel products for projects funded by a Clean Water or Drinking Water State Revolving Fund that may otherwise be prohibited absent this waiver. This national product waiver is short-term, applying to the covered products if those products are purchased up until one year after the waiver's signature date. The waiver is retroactive and also applies to products purchased before the signature date. Covered products purchased prior to the waiver's signature date or within the one-year period may be used subsequent to the waiver expiration date.

Coverage: The specific product categories covered by this waiver include bolted expansion joints, bolted dismantling joints, bolted pipe couplings, bolted pipe restraints, bolted pipe flanges, bolted flange adapters, bolted pipe repair or service saddles, bolted mechanical joints, and pipe hangers and supports. Non-domestic stainless steel nuts and bolts may be incorporated into these specific products; however, all other iron and steel components in these products, unless subject to a waiver, must still meet the AIS requirements. In other words, this waiver does not exempt the whole product, or any of the main iron or steel components such as the ring, sleeve, body, flange spool or mechanical joint, from the AIS requirements just because stainless steel nuts and bolts are used. Any project that receives funds from the CWSRF or DWSRF since the enactment of P.L. 113-76, the "Consolidated Appropriations Act, 2014," is required to comply with the AIS provisions.

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

Rationale: The AIS provisions require CWSRF and DWSRF assistance recipients to use specific domestic iron and steel products that are produced in the United States if the project is funded through an SRF assistance agreement unless the Agency determines that it is necessary to waive this requirement. EPA has authority to issue waivers in accordance with Section 608(c)(2) of the Clean Water Act and the AIS provisions extended by P.L. 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015," under the authority of Section 424(b)(2). The provision states in part: "[the requirements] shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency…finds that – iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality."

Product manufacturers and suppliers informed EPA of concerns about insufficient availability of appropriate domestically produced stainless steel nuts and bolts for use in their bolting-type products. They noted concerns about both delivery (up to six-month delays) and pricing (as much as ten-fold increases per fastener piece).

EPA conducted extensive research and outreach into the market supply of the required parts and determined that, at the time of this waiver, the current manufacturers and suppliers of domestic stainless steel nuts and bolts used in the products identified above are not able to deliver sufficient and reasonably available quantities and sizes of stainless steel nuts and bolts for the products needed. Although special-order stainless steel nuts and bolts might be obtainable for select requests, the lag-time for delivery of these products does not meet the requirements of most projects or suppliers. However, one supplier informed EPA that it is in the process of increasing its supply of domestic nuts and bolts and expects to be providing increased supply within several months. Hence, EPA is providing a national product waiver for one year. Prior to the expiration of the waiver, EPA intends to reassess the market and supply for stainless steel nuts and bolts for the products of interest and will reassess the need for reissuing this waiver.

Public Comments: EPA received comments generally in favor of issuing a waiver. Several commenters requested that EPA include additional types of stainless steel bolts and rods within purview of this waiver, as follows: threaded U-bolts used as a part of a pipe saddle; the restraint rod in bolted pipe restraints; joint harness tie bolts; threaded hook rods in adjustable beam clamps; and pipe hanger rods. EPA is declining to include these products in this waiver. The pipe hanger rods and threaded hook rods are not integral to the coupling products covered by this waiver. Additionally, market research shows that the requested additional rods/U-bolts/harness tie bolts integrated within the couplings covered by this waiver are all domestically available. Their availability is in sufficient quantity to differentiate them from the covered stainless steel bolts and nuts covered herein.

Some commenters requested that EPA make the waiver a permanent action. EPA has decided to issue the waiver for a one-year term. Prior to the expiration of the waiver, EPA will reassess the product market for any changes in domestic availability. As noted above, EPA learned that at least one domestic manufacturer has expressed interest in producing AIS compliant products that would meet the need addressed by this waiver. Hence, EPA has determined that it will not issue a permanent waiver at this time.

Other commenters requested that EPA clarify the coverage of this waiver for past and future products, in other words explain whether products purchased prior to enactment of this waiver would be covered. As noted above, the waiver is retroactive. Recipients thus may use products covered by this waiver that were purchased prior to the signature date.

Finally, one commenter suggested that all fasteners (regardless of whether or not they are stainless steel) be excluded from the AIS requirement. EPA declines to act on this recommendation. While EPA understands that for some manufacturers there is significant burden to track, obtain, store and manage separate stocks of domestic and foreign fasteners within their product lines, it does not consider this waiver to be the appropriate means to address this issue. EPA understands that domestic fastener manufacturers can provide most of the types and sizes of non-stainless steel fasteners needed for covered projects and therefore EPA will not include all fasteners.

Legal Authority: Legal authority for the AIS requirements for CWSRF projects is included under Sec. 608(c)(2) of the Clean Water Act and previously under P.L. 113-76, the "Consolidated Appropriations Act, 2014," under the authority of Section 436(b)(2). Legal authority for the AIS requirements for DWSRF projects is included under P.L. 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015," under the authority of Section 424(b)(2) and also previously under P.L. 113-76. This waiver will continue in force for DWSRF projects under any continuing resolutions or statutes that use similar language as in Section 424 of the "Consolidated and Further Continuing Appropriations Act, 2015."

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