



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

JAN 24 2014

OFFICE OF WATER

MEMORANDUM

SUBJECT: Application of Buy American Requirements to Fiscal Year 2014 Clean Water State Revolving Fund and Drinking Water State Revolving Fund Assistance Agreements

FROM: Nancy K. Stoner
Acting Assistant Administrator

A handwritten signature in black ink, appearing to read "N.K. Stoner", is written over the name and title of the sender.

TO: Water Management Division Directors
Regions I- X

On January 17, 2014, H.R. 3547, "Consolidated Appropriations Act, 2014," (Appropriations Act) was enacted. This law provides appropriations for both the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) for Fiscal Year 2014, while adding a Buy American requirement to these already existing programs. Application of this new requirement is the focus of this memorandum.

H.R. 3547 includes the following language in Division G, Title IV, under the heading, "Use of American Iron and Steel,"

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.

In order to comply with this provision, States must include in all assistance agreements, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, executed on or after January 17, 2014 (date of enactment of H.R. 3547), and prior to October 1, 2014, for the construction, alteration, maintenance, or repair of treatment works under the CWSRF or for construction, alteration, maintenance, or repair of a public water system under the DWSRF, a provision requiring the application of Buy American requirements for the entirety of the construction activities financed by the assistance agreement through completion of construction, no matter when construction commences. The one exception to this requirement is if a project has approved engineering plans and specifications, by a State agency, prior to enactment of the Appropriations Act.

Application of the Buy American requirements extend not only to assistance agreements funded with Fiscal Year 2014 appropriations, but to all assistance agreements executed on or after January 17, 2014 and prior to October 1, 2014, whether the source of the funding is prior year's appropriations, state match, bond proceeds, interest earnings, principal repayments, or any other source of funding so long as the project is financed by an SRF assistance agreement. If a project began construction prior to January 17, 2014, but is financed or refinanced through an assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, Buy American 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 State agency prior to enactment of the Appropriations Act.

Notably, there is no application of the Buy American requirements where such a refinancing occurs for a project that has completed construction prior to January 17, 2014. This provision does not apply to any project for which an assistance agreement was executed prior to January 17, 2014, no matter when construction occurs.

Further information will be provided in the form of guidance as soon as possible.

We understand the complexity of this provision and the challenges involved in its application. If you have any questions, please contact Peter Grevatt or Andrew Sawyers, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at dorfman.jordan@epa.gov or (202) 564-0614 and Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at anderer.kirsten@epa.gov or (202) 564-3134