

AMERICAN IRON AND STEEL ACT REQUIREMENT

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.) shall be used for a project for the construction, alteration, maintenance, or repair of a public treatment works unless all of the iron and steel products used in the project are produced in the United States.

The Contractor acknowledges to and for the benefit of _____ (“Purchaser”) and the Utah Division of Water Quality (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 (CWSRF) and/or Drinking Water State Revolving Fund (DWSRF) 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 requirement 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.

The full American Iron and Steel Guidance can be found at:
http://water.epa.gov/grants_funding/aisrequirement.cfm

AMERICAN IRON AND STEEL REQUIREMENT GUIDANCE

Covered American Iron and Steel (AIS) Products

1. What is an iron or steel product?

For purposes of the CWSRF 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 project:

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

2. 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.

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and then the cost 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 provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed later in this guidance.

3. 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 questions 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.

4. 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.

5. 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 including 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.

6. 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.

7. 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 or scaffolding, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

8. 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;
- Steel Hinged Hatches, Square and Rectangular;
- Steel Riser Rings;
- Trash receptacles;
- Tree Grates;
- Tree Guards;
- Trench Grates; and
- Valve Boxes, Covers and Risers.

9. 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.

10. 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,
- stationary screens

11. 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 filtrations 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,
- dewatering equipment

12. 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.

13. 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 rebar 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 with AIS Requirements

1. 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 (bond, grant agreement), all the way down to the subcontractor and purchase agreements. Language for contracts should be similar to the American Iron and Steel Requirement provision in this contract.

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 adherence to AIS requirements 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. A sample certification is located in this section. These certifications should be collected and maintained by the 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 does 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.

2. How will the State will ensure assistance recipients are complying with the AIS requirement?

In order to ensure compliance with the AIS requirement, the State must include specific AIS contract language in the assistance agreement (i.e. bond, grant agreement, etc.). The assistance recipient must include specific AIS contract language in the project's contract documents.

The State will also conduct site visits of projects during construction and review documentation demonstrating proof of compliance which the assistance recipient has gathered.

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

If a potentially noncompliant product is identified, the State will 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 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 fraudulent activities are 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. More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

4. 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.

AIS Requirement 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 later in this guidance will allow States to apply for waiver, on the behalf of the assistance recipients, to apply for waivers of the AIS requirement directly to EPA Headquarters. Pursuant to the Act, EPA has the responsibility to make findings as to the issuance of waivers to the AIS requirements.

- Reasonably Available Quantity means 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 means the quality of iron or steel products, as specified in the project plans and designs.
- Assistance Recipient means a borrower or grantee that receives funding from a State CWSRF program.

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 waiver applicants 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
General • Waiver request includes the following information: — Description of the foreign and domestic construction materials — Unit of measure — Quantity — Price — Time of delivery or availability — Location of the construction project — Name and address of the proposed supplier — A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the instructions in the memorandum • 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		
Cost Waiver Requests • Waiver request includes the following information: — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products — Relevant excerpts from the bid documents used by the contractors to complete the comparison — 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		
Availability Waiver Requests • 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: — Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials — 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. — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor confirming the non-availability of the domestic construction materials for which the waiver is sought • Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?		

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
Cost Waiver Requests				
• Does the waiver request include the following information? — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products — Relevant excerpts from the bid documents used by the contractors to complete the comparison — A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market				
• Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%?				
Availability Waiver Requests				
• 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? — Supplier information or other documentation indicating availability/delivery date for materials — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials				
• 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?				
• 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)				
• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include: — Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State — Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States — Correspondence with construction trade associations indicating the non-availability of the materials				
• Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits?				

Sample Step Certification Letter

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 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

Sample Certification Letter

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

Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment in the SRF Programs

Taken from December 11, 2020 EPA Memorandum:

Effective August 13, 2020, recipients and subrecipients of EPA funded assistance agreements, including borrowers under EPA funded revolving loan funds, must comply with regulations at 2 CFR 200.216, Prohibition on certain telecommunication and video surveillance services or equipment, implementing section 889 of Public Law 115-232. The regulation prohibits the use of Federal funds to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use “covered telecommunications equipment or services” identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system. Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the System for Award Management exclusion list.

As described in section 889 of Public Law 115-232, covered telecommunications equipment or services includes:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Applicability in the State Revolving Fund (SRF) Programs

Clean Water and Drinking Water SRF (CWSRF and DWSRF) programs may not expend equivalency funds for these products on or after August 13, 2020. States must ensure that equivalency assistance agreements include the telecommunications prohibition condition provided by EPA’s Office of Grants and Debarment (OGD) in OGD’s most recent EPA General Terms and Conditions. The condition must also be in construction contracts associated with equivalency assistance agreements. There is no exhaustive list of components and services that fall under the prohibition. State SRF managers and local assistance recipients should exercise due diligence and be particularly mindful of project components with internet or cellular connections. For example, recipients should be mindful of automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g. process control systems,

distributed control systems and programmable logic controls), and security cameras and other electronic security measures to ensure that those items are procured from a non-excluded entity. Items included in the prohibition are not eligible SRF costs, and the SRF programs cannot reimburse borrowers for these costs.

The prohibition also applies to the CWSRF administrative funds (if states are billing those costs to the federal CWSRF capitalization grant) and the four DWSRF set-asides. States should be mindful of items such as cell phones, computers, and mobile WiFi routers or hotspots funded by those accounts. If you have questions on the implementation of this grant condition, please contact Michael Deane at Deane.Michael@epa.gov or Kiri Anderer at Anderer.Kirsten@epa.gov.

REQUIRED POSTERS

Many of the required workplace posters can be found at <https://www.dol.gov/general/topics/posters/> The following posters required for the project, include but are not limited to:

1.	Minimum Wage Poster	https://www.dol.gov/agencies/whd/posters/flsa
2.	Davis-Bacon Wage Poster WH-1321	https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf
3.	Davis-Bacon Wage Determinations	https://sam.gov/search/?index=dbra&sort=-modifiedDate&page=1&pageSize=25&sfm%5Bstatus%5D%5Bis_active%5D=true&sfm%5BwdLocationWrapper%5D%5BwdStates%5D%5B0%5D%5Bkey%5D=UT&sfm%5BwdLocationWrapper%5D%5BwdStates%5D%5B0%5D%5Bvalue%5D=Utah&sfm%5BwdLocationWrapper%5D%5BwdCounty%5D%5B0%5D%5Bkey%5D=17773&sfm%5BwdLocationWrapper%5D%5BwdCounty%5D%5B0%5D%5Bvalue%5D=San%20Juan
4.	Equal Opportunity Employer Poster:	https://www.dol.gov/sites/dolgov/files/ofccp/regs/compliance/posters/pdf/eeopost.pdf
5.	OSHA Poster	https://www.osha.gov/publications/poster