



# *American Iron and Steel Training*

Colorado SRF Program

March 8, 2016



**COLORADO**  
Department of Public  
Health & Environment



**COLORADO**  
Department of Local Affairs  
Division of Local Government

# *Agenda*

Congressional Legislation

AIS Product Coverage

Steps to Compliance

Waivers

Consequences of Non-compliance

Site Visits

Resources



# *Congressional Legislation*



# *Congressional Legislation*

None of the funds made available by the SRF programs shall be used for a project for construction, alteration, 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.

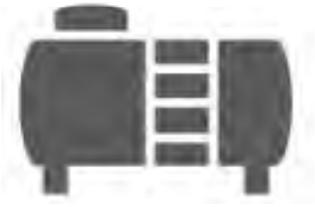
## Enacting legislation:

- Consolidated Appropriations Act 2014 (P.L. 113-76) - Attached AIS requirements to Federal FY 2014 State Revolving Fund (Colorado: DWRF and WPCRF)
- Water Resources Reform and Redevelopment Act (WRRDA) - permanently attached AIS requirements to the Clean Water State Revolving Fund (Colorado: WPCRF)
- Consolidated and Further Continuing Appropriations Act 2015 - Attached AIS requirements to Federal FY 2015 DWRF funding
- Continuing Appropriations Act 2016 - Attached AIS requirements to Federal FY 2016 DWRF funding

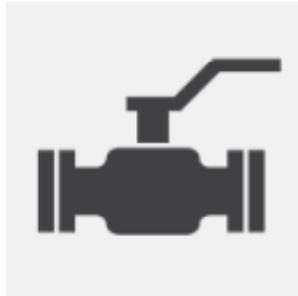
# *AIS Product Coverage*



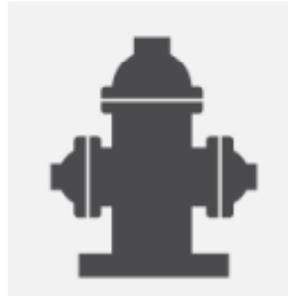
# *AIS Product Coverage*



Tanks



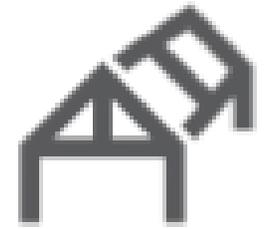
Valves



Hydrants



Flanges



Structural  
Steel



Pipe clamps  
and  
restraints



Lined or  
unlined  
pipes and  
fittings



Reinforced  
precast  
concrete



Manhole covers  
and municipal  
castings



Construction  
materials

# *Municipal Castings*

Iron or steel products that are melted and cast and that provide access, protection, or housing for components incorporated into utility owned infrastructure.

Examples include:

- Access hatches
- Bollards
- Cleanout / monument boxes
- Junction boxes
- Manhole covers, rings, frames and risers

# Construction Materials

Articles, materials or supplies made primarily of iron and steel that are permanently incorporated in the project, *excluding mechanical and/or electrical components, equipment, and systems.*

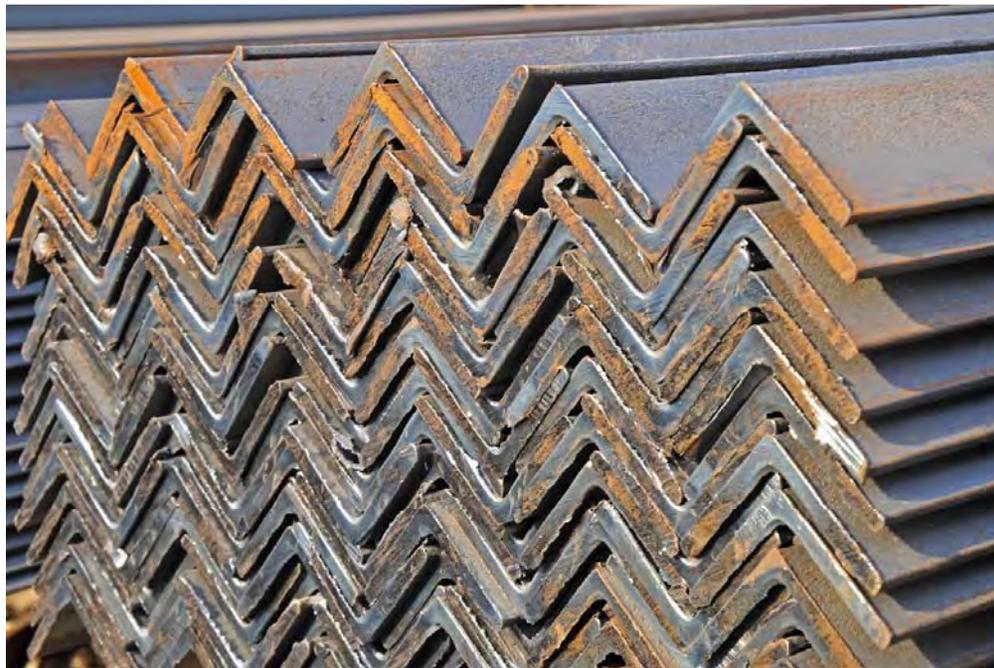
## Included

- Framing
- Decking
- Stairs
- Ductwork
- Fencing
- Doors

## Excluded

- Pumps
- Motors
- Blowers/aeration equipment
- SCADA systems
- Disinfection systems
- Filters

# *Steps to Compliance*



# *How to comply*

1. Include SRF required specifications with AIS provisions in bid package and construction contract
2. Include AIS provisions in all contracts (prime, subs, and manufacturer/supplier\*)
3. Hold Pre-construction meeting to cover AIS requirements, legal responsibilities, and consequences of non-conformance
4. Acquire and maintain certification letters, product logs, waivers, and any other backup documentation
5. Submit AIS Certification form and AIS Product spreadsheet with each pay requisition
6. Perform site visits and file reviews to ensure conformance

# *AIS Roles and Responsibilities*

## State

- Include AIS requirements in loan agreement
- Review and approve bid package for AIS language prior to bid advertisement
- Review AIS Certification form and AIS Product spreadsheet with each pay request
- Perform site inspections and compliance reports as necessary
- Provide technical support on AIS guidance and waiver process
- Respond to EPA inquiries

## Borrower

- Legally responsible for compliance via loan agreement
- Include AIS requirements in bid package and construction contract
- Review AIS certification letters provided by contractor for all AIS materials to ensure conformance
- Sign and submit the AIS Certification form and AIS Product spreadsheet with each pay requisition
- Prepare waiver request for non-compliant products and submit to state project manager
- Provide site inspections as necessary
- Maintain AIS documentation after the completion of construction

# *AIS Roles and Responsibilities*

## Contractors

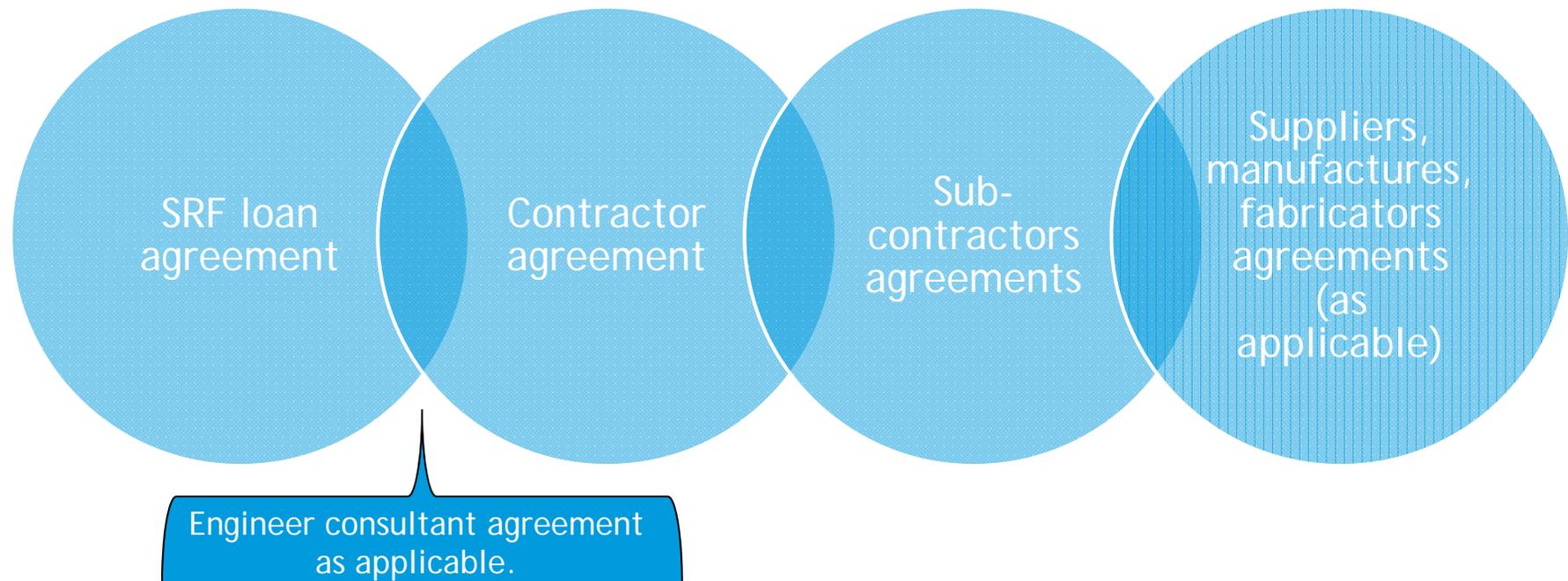
- Legally responsible for compliance through construction contract
- Include AIS requirements in all subcontractor and supplier/manufacturer agreements
- Review all submittals, requisitions, and deliveries for compliance with AIS requirements
- Obtain and provide certifications letters along with AIS Product spreadsheet to borrower

## Suppliers, manufacturers, and fabricators

- Research AIS product availability and lead times
- Provide only AIS compliant materials to contractor
- Provide certification letters to contractor/subcontractor

# *Contract Coverage*

AIS provisions are required to be included in



# Loan Agreement



SRF loan  
agreement

**between  
Colorado Water  
Resources and  
Power Development  
Authority  
and  
borrower**

*American Iron and Steel Requirement. The Governmental Agency will comply with all federal requirements applicable to the Loan, including Section 436 of P.L. 113-76, Consolidated Appropriations Act, 2014, (the “Appropriations Act”) and related State Revolving Fund Policy Guidelines, which require that all of the iron and steel products (as defined in the Appropriations Act and Guidelines) used in the Project must be produced in the United States unless the Governmental Agency has requested and received a waiver from the requirement pursuant to the “waiver process” described in the Appropriations Act and Guidelines.*

# Project Specifications



COLORADO  
Department of Public  
Health & Environment

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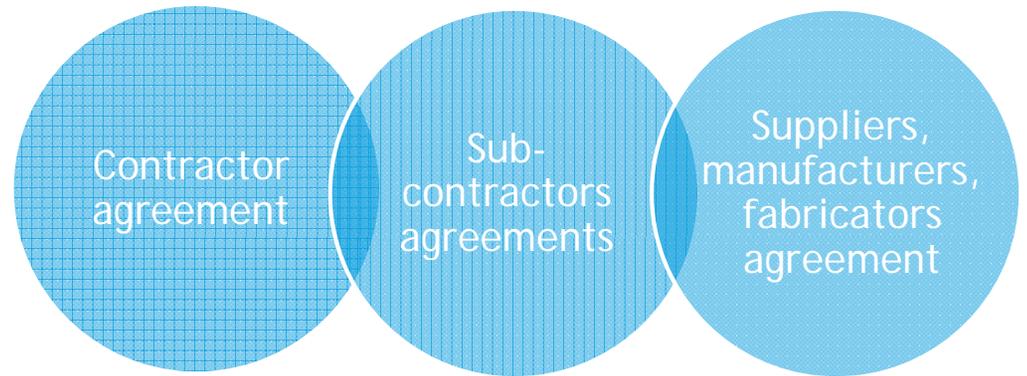
## State Revolving Fund Required Specifications

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Section 2 American Iron and Steel - Page  
14-15

Borrower must submit plans and  
specifications to division for approval  
before competitive bid opens.

Revised September 3, 2015



[www.colorado.gov/pacific/cdphe/water-quality-plans-and-specifications](http://www.colorado.gov/pacific/cdphe/water-quality-plans-and-specifications)

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.

# *Pre-construction Meeting*

- Borrower, prime contractor and any known subcontractors must attend; state staff will attend in person or by phone
- Reinforce roles and responsibilities between state, borrower, consultant, and contractor(s)
- Review project specifications for products that will be required to meet AIS; discuss products that may require a waiver and the process for requesting a waiver
- Discuss communication plan if there are difficulties obtaining certification letters
- Provide state's project manager contact information
- Resources
  - <https://www.colorado.gov/pacific/cdphe/water-quality-low-interest-loan-recipient>
  - [\*Navigating SRF requirements for borrowers\*](#)

# AIS Certification form

- Provides legal certification of conformance with AIS requirements to the state
- Must be signed by an authorized signatory for the loan

 **COLORADO**  
Department of Public Health & Environment  
Dedicated to protecting and improving the health and environment of the people of Colorado

**American Iron and Steel Certification**

Project Name: \_\_\_\_\_  
Period From: \_\_\_\_\_ To: \_\_\_\_\_

Section 436 of the Consolidated Appropriations Act, 2014 states that:

*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.*

To meet this requirement, the undersigned hereby certifies that all iron and steel products which are to be incorporated into the (Name of Construction Contract), has been manufactured and/or fabricated using domestic iron and steel as defined by the above referenced section 436 of P.L. 113-76 and EPA's Guidance Memorandum dated March 20, 2014 for Implementation of American Iron & Steel unless an appropriate waiver has been granted by the Administrator of the Environmental Protection Agency.

\_\_\_\_\_  
Name of Loan Recipient

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Print Name and Title of Authorized Official

**NOTE:** A current completed copy of the American Iron and Steel Products tracking spreadsheet **MUST** accompany this document.

4300 Cherry Creek Drive S., Denver, CO 80246-1530 P 303-692-2000 [www.colorado.gov/cdphe/wqcd](http://www.colorado.gov/cdphe/wqcd)  
John W. Hickenlooper, Governor | Larry Walk, MD, MSPH, Executive Director and Chief Medical Officer



<https://www.colorado.gov/pacific/cdphe/water-quality-srf-forms>

# AIS Product spreadsheet



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Health & Environment

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## American Iron and Steel Certification

Borrower Name: \_\_\_\_\_

Contractor: \_\_\_\_\_

Project Number: \_\_\_\_\_ Date: \_\_\_\_\_

Procurement Date	Product Description	Quantity	Cost	*Type of Certification Used ~Manufacturer/Fabricating Shipment Wavier (Pick One)	New or Existing Certification

- \* used to verify chain of custody control for product
- ~ includes melting, bonding, coating, galvanizing, cutting, etc.



<https://www.colorado.gov/pacific/cdphe/water-quality-srf-forms>

# *Certification Letters*



- Contractor must obtain certifications for all iron and steel materials unless a waiver is granted
- Borrower must maintain copies of all certifications
- Certifications provide project specific assurance that the materials are compliant
- Manufacturer vs. Step Certifications

**Company Letterhead**  
confirms it is an official document.

**Project Name**  
documents that the certification is specifically for the project.

**Signature**  
documents the individual responsible for verifying compliance

**Mueller Co.**

6125 Preservation Dr, Suite 200  
Chattanooga, TN 37416  
(423) 490-9555

**Certification of Compliance with American Iron and Steel (AIS) Provisions**

October 9, 2014

Grand Junction Pipe & Supply  
Durango, CO

**Subject:** Palo Verde Waterline  
Durango, CO

I, Nick Peyton, certify that the following gate valves and hydrants shipped/provided to Palo Verde Waterline Project prior to October 1, 2014, are in compliance with the American Iron and Steel ("AIS") requirement as mandated in EPA's State Revolving Fund Programs and as interpreted by the EPA.

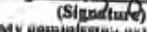
Products and/or Materials:

1. DA-2360-23, M.J. x M.J. Resilient Wedge Gate Valves, 6" qty 5 and 8" qty 9
2. D A-423, Super Centurion Fire Hydrant

The products that are the subject of this certification were manufactured at Chattanooga, TN (gate valves) and Albertville, AL (hydrants). As explained by the EPA in its "Questions and Answers Part 1: Valves and Hydrants" at A1, available at [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), "[f]or purposes of the 2014 AIS requirement, EPA considers only the significant iron and steel components of a covered valve or hydrant – the body, bonnet, shoe, stem, and wedge/disk/gate/ball – to be within the definition of 'iron and steel products' that must either be made domestically, or otherwise must comply with the AIS requirement." Thus, we confirm that to the extent the gate valves and/or hydrants that are the subject of this certification contain a body, bonnet, shoe, stem, or wedge/disk/gate/ball made of iron or steel, the iron or steel in each of the defined significant iron and steel components was melted in the United States. This certification does not extend to other components that have not been listed by the EPA as significant iron and steel components.

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

  
\_\_\_\_\_  
Nick Peyton  
VP International Sales

Subscribed and sworn to before me in my Presence, this 9th day of October 2014, a Notary Public in and for the County of Hamilton State of Tennessee  
  
(Signature) Notary Public  
My commission expires Aug 7, 2016



Does not need to be stamped or notarized

**AIS Compliance Statement**

AIS requirement only applies to the EPA's State Revolving Fund Programs - Buy America, Buy American, ARRA have different requirements!

**Product Description**

used to match onsite materials to certifications.

**Facility Location (City and State)**

easily verifiable information that can be used to ensure the material meets AIS.

# *Best Practices*

- Borrower conducts Pre-bid and Pre-construction meetings to cover AIS requirements, legal responsibilities, and consequences of non-conformance
- Contractor reviews all submittals, requisitions, and product deliveries for compliance with AIS requirements
- Before construction, contractor and borrower should develop an inventory of all AIS products using the Plans and Specifications
- All agreements must include contract coverage language
- Questions and/or concerns should always be addressed with state's project manager as early as possible - *utilize the expertise and experience of the SRF program!*

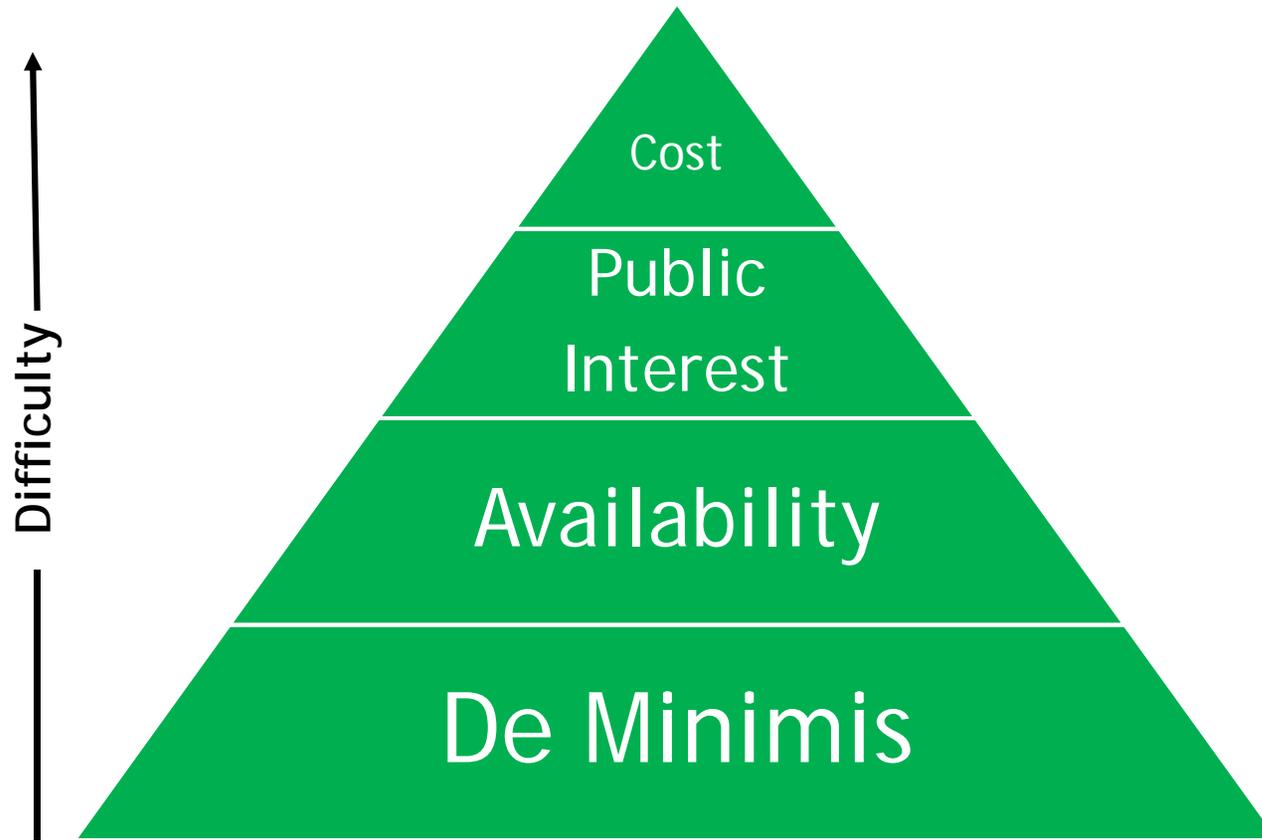
# *Pre-bid Meeting (best practice)*

- Discuss AIS requirements and resources
- Explain potential pricing and/or schedule impacts
- Provide roles and responsibilities for state, borrower, contractor, subcontractors, and suppliers/manufacturers
- Highlight typical issues
- Review project specifications for products that will be required to meet AIS
- Provide borrower and state project manager contact information in case of questions during estimating process
- Explain expectations for awarded contractor

# Waivers



# *Applicable Waivers*



# *De Minimis Waiver*

- Nationwide waiver that covers incidental materials only
- Must be tracked on a de minimis list and the AIS Product spreadsheet
- List cannot exceed 5% of project material costs
- Each product on list cannot exceed 1% of project material costs
- Examples include: screws, fasteners, miscellaneous wire, corner bead, staples, common nails, etc.

# *Availability Waiver*

- Project specific waiver
- Only used if products are not produced in the United States in sufficient and reasonable available quantities and of satisfactory quality
- Must be submitted as early as possible
- EPA will either approve the waiver, or provide the name of a manufacturer that can be used

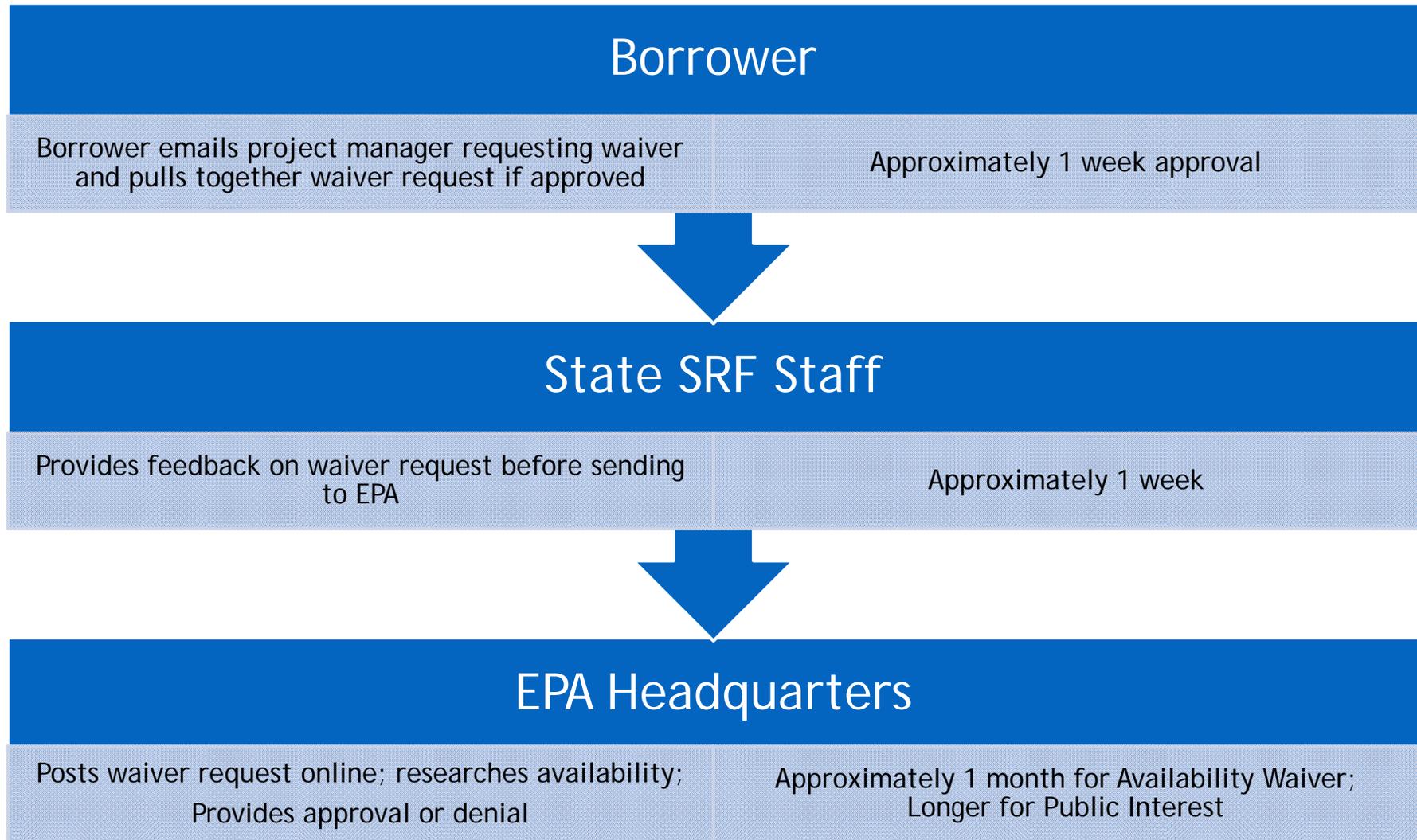
# *Public Interest Waiver*

- Project specific waiver
- Only used if applying AIS would be inconsistent with public interest
- 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 would be non-compliant hydrants to match the Town or District equipment

# *Cost Waiver*

- Project specific waiver
- Only used if total project costs (labor and materials) increase more than 25% as a result of using AIS compliant materials
- We are not aware of any projects receiving this waiver

# Step-by-step waiver process



## 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
<b>General</b> <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>		
<b>Cost Waiver Requests</b> <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>		
<b>Availability Waiver Requests</b> <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 1, page 15, EPA, American Iron and Steel Requirement Guidance, Implementation of American Iron and Steel provisions of P.L. 113-76, Consolidated Appropriations Act, 2014*

## 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
<b>Cost Waiver Requests</b>				
<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>				
<b>Availability Waiver Requests</b>				
<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?</li> <li>• 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)</li> <li>• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include:               <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 2, page 16, EPA, American Iron and Steel Requirement Guidance, Implementation of American Iron and Steel provisions of P.L. 113-76, Consolidated Appropriations Act, 2014*

# *Consequences of Non-compliance*



# *Non-Compliance*

If non compliant items are installed, potential remedies (in order) are:

- Remove and replace items with compliant materials
- Seek waiver
- State may withhold funds until issue is resolved
- EPA may debar responsible parties
- EPA may file civil and/or criminal charges for fraud, waste, or abuse\*

*\*If fraud, waste, or abuse or any violation of the law is suspected, EPA's Office of Inspector General (OIG) should be contacted immediately.*

# *Site Visits*



# Site Visits

- Performed by borrower, state or EPA
- Check invoices against product spreadsheet and certification letters
- Check installed materials against certification letters
- Review project plans and specifications to look for materials that were potential missed
- Review de minimis tracking



# *Resources*



# *Guidance*

Colorado State Revolving Fund

<https://www.colorado.gov/pacific/cdphe/wq-low-interest-loans>

EPA American Iron and Steel

<http://www2.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>

American Iron and Steel Institute

[www.steel.org/](http://www.steel.org/)

