



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

AUG 24 2018

DECISION MEMORANDUM

OFFICE OF WATER

SUBJECT: Final Extension of the 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: David P. Ross
Assistant Administrator

A handwritten signature in black ink that reads "D. Ross".

The U.S. Environmental Protection Agency (EPA) hereby grants an extension of the 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, pursuant to the "American Iron and Steel" (AIS) requirements of the Clean Water Act. The original waiver was signed on February 18, 2015, and was granted a one-year extension on February 22, 2016. A second extension was granted until February 18, 2018. With this third and final extension, the waiver will retroactively cover nuts and bolts purchased since February 18, 2018, and be extended 18 months from the signing date of this waiver (sunset date). This waiver will not be renewed after the sunset date. This waiver permits the purchase and use of non-domestically produced stainless steel nuts and bolts in bolting-type pipe couplings, restraints, joints, and repair saddles in iron and steel products for projects funded by a Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) that may otherwise be prohibited absent this waiver.

The original, approved waiver provides details regarding the specific types of products covered by and the rationale for issuance of the waiver (see: <https://www.epa.gov/sites/production/files/2015-09/documents/short-term-natl-waiver-for-ss-nuts-bolts-021815.pdf>). This national product waiver extension is short-term, applying to the covered products if those products are purchased by the assistance recipient or their representatives (i.e. construction contractor) up until the sunset date.

The EPA is granting this national product waiver extension on a short-term basis in order to provide the time U.S. manufacturers need to increase the domestic production of the specified stainless steel nuts and bolts. Upon the production of these parts, the EPA stands ready to provide assistance to states and others to help identify AIS compliant products consistent with the April 2017 Buy American and Hire American Executive Order.

Attachments:

1. Rationale and Legal Authority
2. Summary of Comments Received During 15-Day Informal Public Input Period on Short-Term Waiver Extension for Stainless-Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles for State Revolving Fund (SRF) Projects

ATTACHMENT 1: Rationale and Legal Authority

Rationale: In 2017, the EPA updated and expanded its market research on fasteners of interest including stainless steel nuts and bolts used in pipe couplings, pipe restraints, expansion joints, dismantling joints, pipe flanges, flange adaptors, and pipe repair or service saddles. The EPA contacted all known domestic fastener manufacturers and raw material suppliers of domestic stainless steel wire/bar stock. Through the extensive research effort, the EPA found that the existing domestic supply of stainless steel nuts and bolts for the subject products was similar to the previous year's assessment, yet showed potential for production increases. The EPA received anecdotal evidence from two manufacturers (which the Agency then visited for confirmation) that there is potential capacity to significantly expand (by two- to three-fold) production of stainless steel fasteners within six months to one year. The EPA's research could not confirm whether the manufacturers could produce sufficient quantities to support the national demand subsequent to the potential future expansion. The EPA confirmed that adequate raw material supply of stainless steel wire and bar would be available for a potential domestic fastener expansion. Because of the uncertainty about market demand and supply of stainless steel fasteners, the EPA solicited informal public input on its research findings during a 15-day public input period. The EPA posed questions to the public (soliciting the attention of all known product manufacturers, industry suppliers, interested third parties, and potential users), attempting to obtain further information on the following subjects:

- The time frame required for fastener manufacturers to scale up to meet potential demand;
- The time frame for specific specialty fasteners to be produced should the waiver expire;
- Whether the EPA had identified all fastener manufacturers capable of, and interested in, producing the size and quantity of orders for water and wastewater project purposes;
- Whether a targeted waiver for only a portion of the supply would be viable; and
- Whether the EPA had identified and correctly assessed the domestic raw material sources of stainless-steel wire and bar stock.

The EPA received 20 public comments from suppliers and distributors of products containing stainless steel nuts and bolts and downstream users of those products. Based on the EPA's research and the consensus of public comments, the Agency cannot confirm an adequate supply of domestic nuts and bolts for project and market demand. Currently, the comments and the EPA's research indicate that fastener manufacturers have insufficient time to commit and plan for expanding the production capacity to meet the current and projected demands of stainless steel nuts and bolts. The EPA's research, the public comments, and evidence submitted over the past several months confirm that without extension of the waiver, AIS-compliant product availability is limited and associated projects have been delayed.

Lacking evidence that manufacturers of stainless steel nuts and bolts used in the subject products can meet current demands within a reasonable timeframe, the EPA is extending the national waiver until the sunset date. Upon expiration of this extension, the waiver will not be renewed. This final extension should allow manufacturers adequate time to prepare for business plan changes and to ramp up domestic production of stainless steel nuts and bolts.

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. 115-141, the "Consolidated Appropriations Act, 2018," and previously under P.L. 113-76, P.L. 113-235 and P.L. 114-113. 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 Appropriations Act, 2018."

ATTACHMENT 2: Summary of Comments Received During 15-Day Informal Public Input Period on Short-Term Waiver Extension for Stainless-Steel Nuts and Bolts used in Pipe Couplings, Restraints, Joints, Flanges, and Saddles for State Revolving Fund (SRF) Projects

The EPA received 17 comments from product suppliers and distributors that asserted the following arguments:

- Commenters stated that the EPA's research showed that there is not sufficient supply to satisfy the current demand for domestic stainless steel nuts and bolts and that the current window of six months to one year to potentially increase this production and supply would impact project timelines if the waiver is not extended. Commenters provided examples of Tee bolts, Victaulic Trackhead nuts and bolts, and standard bolts (less than one-inch in size) as materials that are extremely limited in supply domestically. Suppliers argued that the EPA should allow domestic manufacturers sufficient time to develop production capacity to reliably meet the current demand for stainless steel nuts and bolts; however, no specific timeframe was provided.
- Commenters stated that even with the potential increase in raw material supply, there are a limited number of domestic stainless steel nut and bolt manufacturers who will be tasked with supplying a diverse range of nuts and bolts, including specialty metals, non-standard sizes and project-specific product specifications. Suppliers noted that it was not evident in the EPA's findings whether the nut and bolt manufacturers had the capacity to customize small batch productions within a reasonable timeframe.
- Some suppliers were concerned with the notion of relying on a few domestic manufacturers with exclusive control over the pricing and supply of domestic nuts and bolts for time critical DWSRF-funded and CWSRF-funded projects.
- Commenters expressed concern regarding the documentation and traceability of domestic stainless steel nuts and bolts becoming an unwieldy process if the waiver extension is not granted. Suppliers indicated that material test reports are not typically generated for nuts and bolts; however, without an extension, manufacturers asserted that they would incur a significant increase in burden to establish a reporting process for these materials to comply with the AIS requirements and consequently, longer lead times to procure the materials.
- Several commenters suggested providing a permanent, non-expiring waiver.
- One commenter noted that the increased burden for identifying and documenting AIS-compliant nuts and bolts without the waiver in place will discourage overall participation in the SRF program.
- One commenter suggested further clarification in the definition of nuts and bolts to include names and size ranges. The commenter proposed including pipe nipples and threaded couplings as specific products to include as part of the waiver (if they are to be considered "nuts and bolts" by the EPA).

The EPA received three comments from downstream users of products containing stainless steel nuts and bolts covered under the waiver. The commenters noted concern that a lapse in the waiver will result in a shortage of supply, leading to project schedule impacts and increased project costs.

One commenter urged the EPA to allow sufficient time for nut and bolt manufacturers to commit to ramping up production/supply before terminating the waiver.