



Rural Development

DECISION Memorandum FOR the Administrator

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FROM: *for* SCOTT BARRINGER *Kelli M. Kubica*  
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SUBJECT:

De Minimis Waiver and Minor Components Waiver under Section 746 Division A Title III of the 2017 Appropriations Act for American Iron and Steel (AIS) for the United States Department of Agriculture (USDA) Water and Waste Disposal Program (WWD) administered by the Rural Utilities Service (RUS).

BACKGROUND:

Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) requires that iron and steel products used in projects funded by the WWD programs be produced in the United States.

According to the statute, "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.

The statute also states that the requirement:

Shall not apply in any case or category of cases in which the Secretary of Agriculture or the designee of the Secretary finds that: Applying the requirement would be inconsistent with the public interest; The required items are not produced in the U.S. in sufficient and reasonably available quantities or of a satisfactory quality; or Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25%.

There is a need for a variety of incidental low cost items/materials as well as minor components of products within otherwise compliant iron and steel products used in construction projects by rural communities. The cost of these items would be low but the administrative complexity of tracking them for compliance with AIS is significant. The cost to low income rural communities would create an administrative burden that would exceed the benefit to these communities.

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It is critical that USDA not delay projects due to the expected high volume of administrative reviews associated with the individual requests for these incidental items. Delays may affect project cost and could lead to cost overruns as well as higher utility rates for low income rural communities.

Rural communities frequently leverage USDA's funding on individual projects with the Environmental Protection Agency's (EPA) State Revolving Fund programs. EPA has a similar AIS requirement under its State Revolving Fund program. In order to successfully implement its requirements, EPA has instituted various types of waivers. In order to apply AIS requirements consistently across both federal agencies it is critical to have similar public interest waivers implemented. Currently, EPA has approved the use of a public interest de minimis waiver and is in the process of implementing a minor components waiver. The waiver we are proposing is a combination of the de minimis and minor components waiver.

Approval of this de minimis and minor components waiver is supported by Section 746 (b) (1): "applying subsection (a) would be inconsistent with the public interest."

RECOMMENDATION:

It is recommended that you sign the attached de minimis and minor components waiver to assist our rural communities in complying with the AIS requirements mandated by Section 746 Division A Title III.

DECISION BY THE ADMINISTRATOR:

Approve: ✓ 

Disapprove: \_\_\_\_\_

Discuss: \_\_\_\_\_

## DEMINIMIS & MINOR COMPONENTS WAIVER

### BACKGROUND:

Section 746 Division A Title III the Consolidated Farm and Rural Development Acts of 2017 states:

(a)(1) No Federal funds made available for this fiscal year for the rural water, waste water, waste disposal, and solid waste management programs authorized by sections 306, 306A, 306C, 306D, 306E, and 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et seq.) shall be used for a project for the construction, alteration, maintenance, or repair of a public water or wastewater system 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 Secretary of Agriculture (in this section referred to as the “Secretary”) or the designee of the Secretary 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 or 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 Secretary or the designee receives a request for a waiver under this section, the Secretary or the designee shall make available to the public on an informal basis a copy of the request and information available to the Secretary or the designee 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 Secretary or the designee shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Department.

### DEFINITIONS:

“De minimis incidental components” are various miscellaneous low-cost components that are essential for, but incidental to, the construction and are incorporated into the physical structure of the project. Funds used for such de minimis incidental components cumulatively may comprise no more than a total of five percent of the total cost of the materials used in and incorporated into a project; the cost of an individual item may not exceed one percent of the total cost of the materials used in and incorporated into a project.

Examples of de minimis items could include: small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, comer bead, ancillary tube, etc. Examples of items that are clearly not incidental include: significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer

collection and/or water distribution, treatment and storage tanks, large structural support structures, etc.

“Minor components” are components *within* an iron and/or steel product otherwise compliant with the American Iron and Steel requirements. This is different from de minimis definition where de minimis pertains to the entire project and the minor component definition pertains to a single product. This waiver, would allow non-domestically produced miscellaneous minor components comprising up to five percent of the total material cost of an otherwise domestically produced iron and steel product to be used. However, unless a separate waiver for a product has been approved, all other iron and steel components in said product must still meet the AIS requirements. This waiver does not exempt the whole product from the AIS requirements only minor components within said product and the iron or steel components of the product must be produced domestically. Valves and hydrants are also subject to the cost ceiling requirements described here.

Examples of minor components could include items such pins and springs in valves/hydrants, bands/straps in couplings, etc.

#### JUSTIFICATION:

During the design and construction of water and waste infrastructure projects, various miscellaneous low-cost de minimis components that are essential for, but incidental to, the construction are incorporated into the physical structure of the project. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental.

In addition, this waiver covers minor components *within* an otherwise compliant iron and/or steel product. Since the implementation of these requirements by various federal agencies, rural communities procuring iron and steel products for their projects, have come across issues with manufacturers related to product management, inventory control, delivery, supply and availability, relating to miscellaneous minor components in AIS-compliant iron and steel products. These issues have created significant delays and additional costs to rural communities.

By issuing this waiver, we intend to avoid unnecessary cost and delay to projects as a result of seeking project specific waivers for de minimis and minor components.

#### Waiver:

RUS hereby finds it is in the public's interest to permit the use of this waiver to allow the use of de minimis items and minor components for water and waste projects funded by RUS.

This would allow recipients of RUS funds administered by Water and Environmental Programs to use domestic iron and steel products specific to this waiver that are produced in the

United States for a project funded through a loan and/or grant after May 5<sup>th</sup>, 2017 through the end of Fiscal Year (FY) 2017, unless the agency is subject to these requirements beyond FY 2017.