

## THE WIFIA PROGRAM'S AIS WAIVER PROCESS – HOW IT WORKS?

The American Iron and Steel requirement has been effective since 2014, when it was first implemented in EPA's State Revolving Fund Programs. The AIS requirement is a provision in WIFIA's statute (33 USC §3914) that required use of certain listed iron and steel products for eligible projects funded by the WIFIA program. Implementation of the AIS requirements is closely coordinated between programs.

AIS allows the WIFIA program to grant **project-specific** waivers in specific circumstances:

- Applying the requirement is inconsistent with the public interest (a "public interest waiver");
- The listed iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality (non-availability waiver); or
- Inclusion of the listed iron and steel products produced in the United States will increase the cost of the project by 25% or more (an "unreasonable cost waiver").

Product availability waiver requests are most common because not all items covered under the AIS requirement may be produced in the U.S. Borrowers should notify the WIFIA program when product availability issues are identified and prior to product procurement and installation to ensure that the project maintains compliance with the AIS requirement. Although not required, identifying products during project design can help the borrower assess market availability and initiate a timely waiver process, where needed.

Waivers should only be sought when all avenues of procuring AIS-compliant products have been exhausted and the de minimis waiver does not apply. National waivers, like the de minimis waiver, are valuable tools to facilitate compliance. In many cases, a borrower may find that an availability waiver is not needed.

Public interest and cost waivers are less common. Borrowers should initiate further discussions with the WIFIA program if they believe their project could qualify for a public interest or cost waiver. The waiver process is the same for these waivers except supporting documentation may vary depending on the circumstances surrounding the waiver need. AIS waiver requests should follow these steps:

**STEP 1. SUBMIT THE REQUEST.** Follow the instructions on the [WIFIA AIS Waiver Request Form](#) and submit the request to your WIFIA point of contact. The WIFIA program reviews the request for adequacy and will process the request on the borrower's behalf.

**STEP 2. INDEPENDENT PRODUCT RESEARCH. (APPROX. 10-14 DAYS).** Before waiver requests are considered, the WIFIA program will conduct independent market review based on the borrower's technical specifications of the product, if there is a product component to the request. Due diligence completed by the borrower to find and procure AIS-compliant options for the product that is the subject of the waiver request should also be submitted to the program.

**STEP 3. BORROWER ASSESSMENT.** The timing of this step relies heavily on the WIFIA borrower to evaluate feasible options. The WIFIA program will notify the borrower of the results of the initial review and potential options for exploration by the borrower. If there was product market research, we will confirm unavailability of the products or identify additional domestically available options for the borrower to assess against their project requirements. If there are feasible options, no further steps are taken, and the program will request the borrower withdraw the waiver request.

**STEP 4. INFORMAL PUBLIC COMMENT PERIOD (15 DAYS).** If comments are received on the waiver request, the WIFIA program will follow up with the borrower and their technical staff, as needed, to respond to comments. Waiver requests are subject to a 15-day comment period. Borrowers will be notified when their request is posted on the AIS webpage under [Waiver Requests Received by EPA](#) and if comments are received from the public.

**STEP 5. APPROVAL AND NOTIFICATION (7-10 DAYS).** Once all comments have been addressed, the WIFIA program will route a waiver recommendation package for review and signature through the Office of Water management team. The WIFIA program will post the approved waiver on the AIS webpage under [Approved Project Waivers](#) and notify the borrower.