

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8994-7]

Amended Environmental Impact Statement Filing System Guidance for Implementing 40 CFR 1506.9 and 1506.10 of the Council on Environmental Quality's Regulations Implementing the National Environmental Policy Act

1. Introduction

On October 7, 1977, the Council of Environmental Quality (CEQ) and the Environmental Protection Agency (EPA) signed a Memorandum of Agreement (MOA) that allocated the responsibilities of the two agencies for assuring the government-wide implementation of the National Environmental Policy Act of 1969 (NEPA). Specifically, the MOA transferred to EPA the administrative aspects of the environmental impact statement (EIS) filing process. Within EPA, the Office of Federal Activities has been designated the official recipient in EPA of all EISs. These responsibilities have been codified in CEQ's NEPA Implementing Regulations (40 CFR Parts 1500–1508), and are totally separate from the substantive EPA reviews performed pursuant to both NEPA and Section 309 of the Clean Air Act.

Under 40 CFR 1506.9, EPA can issue guidelines to implement its EIS filing responsibilities. The purpose of the EPA Filing System Guidelines is to provide guidance to Federal agencies on filing EISs, including draft, final, and supplemental EISs. Information is provided on: (1) Where to file EISs; (2) the number of copies required; (3) the steps to follow when a Federal agency is adopting an EIS, or when an EIS is withdrawn, delayed or reopened; (4) public review periods; (5) issuance of notices of availability in the **Federal Register**; and (6) retention of filed EISs. EPA's current EIS filing guidelines were published in the **Federal Register** on March 7, 1989.

The guidelines published today update the previous guidelines, modify the number and format of the EISs to be filed, and provide specific guidelines for EIS filing during Continuity of Operations Plan (COOP) events. Additionally, we are soliciting input from federal agencies, other stakeholders, and the public on a series of questions that will be used to make further modifications to the EIS filing process in the future.

2. Purpose

Pursuant to 40 CFR 1506.9 and 1506.10, EPA is responsible for administering the EIS filing process, and can issue guidelines to implement those responsibilities. The process of EIS filing includes the following: (1) Receiving and recording of the EISs, so that information in them can be incorporated into EPA's computerized data base; (2) establishing the beginning and ending dates for comment and review periods for draft and final EISs, respectively; (3) publishing these dates in a weekly Notice of Availability (NOA) in the **Federal Register**; (4) retaining the EISs in a central repository; and (5) determining whether time periods can be lengthened or shortened for "compelling reasons of national policy."

Under 40 CFR 1506.9, lead agencies are responsible for distributing EISs, and for providing additional copies of already distributed EISs, to the interested public for review. However, EPA will assist the public and other Federal agencies by providing agency contacts on, and information about, EISs.

3. Filing Draft, Final, and Supplemental EISs

Federal agencies are required to prepare EISs in accordance with 40 CFR part 1502, and to file the EISs with EPA as specified in 40 CFR 1506.9. Federal agencies file an EIS by providing EPA with four copies of the complete EIS, including appendices. At least one copy of the entire EIS must be a paper copy; the remaining three (3) copies can be on appropriate electronic storage devices—e.g., compact discs (CDs), USB flash drives, or memory cards. Please note that if a Federal agency prepares an abbreviated Final EIS (as described in 40 CFR 1503.4(c)), it should include copies of the Draft EIS when filing the Final EIS.

To file an EIS by using the U.S. Postal Service (including USPS Express Mail), please use the following address: U.S. Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Mail Code 2252A, Ariel Rios Building (South Oval Lobby), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

To file an EIS in person or by commercial express service (including Federal Express or UPS), please use the following address:

(If the documents are to be hand-delivered, you will need to ask the security guards to phone our office at (202) 564-5400, so you can be escorted to the EIS Filing Section.)

U.S. Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Room 7220, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

Telephone inquiries can also be made to: (202) 564-1399 or (202) 564-7146.

EPA encourages Federal agencies to make their EISs available on the internet. Those that do should send EPA a copy of the Web address (*i.e.*, URL) for the document. The appropriate information should be e-mailed to: *EIS-Filing@epa.gov* concurrent with filing the EIS as required above.

The EISs must be filed no earlier than they are transmitted to commenting agencies and made available to the public (40 CFR 1506.9). This will assure that the EIS is received by all interested parties by the time EPA's NOA appears in the **Federal Register**, and, therefore, allows for the full minimum comment and review periods.

If EPA receives a request to file an EIS and transmittal of that EIS is not complete, it will not publish a NOA in the **Federal Register** until assurances have been given that the transmittal process is complete. Similarly, if EPA discovers that a filed EIS has not been transmitted, EPA will issue a notice with the weekly Notices of Availability retracting the EIS from public review of the EIS until the transmittal process is completed. Once the agency has fulfilled the requirements of 40 CFR 1506.9, and has completed the transmittal process, EPA will reestablish the filing date and the minimum time period, and will publish this information in the next NOA.

Requirements for circulation of EISs appear in 40 CFR 1502.19. Please note that the four EISs submitted to the Office of Federal Activities are only for filing purposes; agencies will need to send a copy(s) of the EIS directly to the appropriate EPA Regional Office for review and comment in accordance with EPA's responsibilities under Section 309 of the Clean Air Act.

EPA must be notified (by letter or email) when a Federal agency adopts an EIS in order to commence the appropriate comment or review period. If a Federal agency chooses to adopt an EIS written by another agency, and it was not a cooperating agency in the preparation of the original EIS, the EIS must be re-circulated and filed with EPA according to the requirements set forth in 40 CFR 1506.3(b). In turn, EPA will publish a NOA in the **Federal Register** announcing that the document will have an appropriate comment or review period. When an agency adopts

an EIS on which it served as a cooperating agency, the document does not need to be circulated for public comment or review; it is not necessary to file the EIS again with EPA. However, EPA should be notified in order to ensure that the official EIS record is accurate. EPA will publish an amended NOA in the **Federal Register** that states that an adoption has occurred. This will not establish a comment period, but will complete the public record.

EPA should also be notified of all situations where an agency has decided to withdraw, delay, or reopen a review period on an EIS. All such notices to EPA will be reflected in EPA's weekly Notices of Availability published in the **Federal Register**. In the case of reopening EIS review periods, the lead agency should notify EPA as to what measures will be taken to ensure that the EIS is available to all interested parties. This is especially important for EIS reviews that are being reopened after a substantial amount of time has passed since the original review period closed.

Once received by EPA, each EIS is stamped with an official filing date and checked for completeness and compliance with 40 CFR 1502.10. If the EIS is not "complete" (*i.e.*, if the documents do not contain the required components), EPA will contact the lead agency to obtain the omitted information or to resolve any questions prior to publishing the NOA in the **Federal Register**.

Agencies often publish (either in their EISs or individual notices to the public) a date by which all comments on an EIS are to be received; such actions are encouraged. However, agencies should ensure that the date they use is based on the date of publication of the NOA in the **Federal Register**. If the published date gives reviewers less than the minimum review time computed by EPA, EPA will send the agency contact a letter explaining how the review period is calculated and the correct date by which comments are due back to the lead agency. This letter also encourages agencies to notify all reviewers and interested parties of the corrected review periods.

4. EIS Filing Procedure for COOP Events

In order to ensure official filing of EISs in the event of a COOP event, when EISs cannot be physically delivered to EPA, Federal agencies will need to send EPA a copy of the EIS cover sheet to the email address identified above. In turn, EPA will use the cover sheet information to publish the weekly EIS NOA in the **Federal Register**.

During the COOP event, filing agencies should not submit the four copies of the EIS to the EPA. However, once the COOP event is over, filing agencies will have 14 days to submit the four copies of all EISs filed during the event to the EPA's Filing Section. If EPA does not receive the four copies of the EIS filed during the COOP event within 14 days, it will publish a notice in the **Federal Register** retracting the NOA for that EIS.

5. Notice in the **Federal Register**

EPA will prepare a weekly report of all EISs filed during the preceding week for publication each Friday under a NOA in the **Federal Register**. If the Friday is a Federal holiday the publication will be on Thursday. At the time EPA sends its weekly report for publication in the **Federal Register**, the report will also be sent to the CEQ. Amended notices may be added to the NOA to include corrections, changes in time periods of previously filed EISs, withdrawals of EISs by lead agencies, and retraction of EISs by EPA.

6. Time Periods

The minimum time periods set forth in 40 CFR 1506.10 (b), (c), and (d) are calculated from the date EPA publishes the NOA in the **Federal Register**. Comment periods for draft EISs, draft supplements, and revised draft EISs will end 45 calendar days after publication of the NOA in the **Federal Register**; review periods for final EISs and final supplements will end 30 calendar days after publication of the NOA in the **Federal Register**. If a calculated time period would end on a non-working day, the assigned time period will be the next working day (*i.e.*, time periods will not end on weekends or Federal holidays). While these time periods are minimum time periods, a lead agency may establish longer time periods. If the lead agency employs a longer time period, it must notify EPA of the extended time period when either filing the EIS or when the lead agency extends the time period.

It should be noted that 40 CFR 1506.10(b) allows for an exception to the rules of timing. An exception may be made in the case of an agency decision which is subject to a formal internal appeal. Agencies should assure that EPA is informed so that the situation is accurately reflected in the NOA.

Moreover, under 40 CFR 1506.10(d), EPA has the authority to both extend and reduce the time periods on draft and final EISs based on a demonstration of "compelling reasons of national policy." A lead agency request to EPA to

reduce time periods or another Federal agency (not the lead agency) request to formally extend a time period should be submitted in writing to the Director, Office of Federal Activities, and outline the reasons for the request. EPA will accept telephone requests; however, agencies should follow up such requests in writing so that the documentation supporting the decision is complete. A meeting to discuss the consequences for the project and any decision to change time periods may be necessary. For this reason, EPA asks that it be made aware of any intent to submit requests of this type as early as possible in the NEPA process. This is to prevent the possibility of the time frame for the decision on the time period modification from interfering with the lead agency's schedule for the EIS. EPA will notify CEQ of any reduction or extension granted.

7. Retention

Filed EISs are retained in the EPA Office of Federal Activities for a period of two years and are made available to office staff only. After two years the EISs are sent to the National Records Center. After a total of twenty (20) years the EISs are transferred to the National Archives Records Administration (NARA).

8. Soliciting Comments on Future Updates of the EIS Filing Guidelines

In addition to the modifications to the filing guidelines outlined herein, EPA is considering additional modifications that may lead to the implementation of an electronic EIS filing process. With that in mind, EPA is soliciting comments from Federal agencies, other stakeholders and the public on the following questions.

For Federal Agencies

1. Does your agency make its Draft, Final, and Supplemental EISs available for public review on the Internet?
2. If so, how long do the Draft, Final, and Supplemental EISs remain available for review on the Internet?
3. In a related matter, does your agency mandate how long EISs must be available for public review?
4. If so, how long is that period?
5. Also, does your agency mandate how long its EISs must be retained as official agency records?
6. If so, how long is that period?

For Stakeholders and the Public

1. At some point in the future, CEQ and EPA may eliminate the publication of weekly Notices of Availability for EISs in the **Federal Register** in favor of a central repository on the Internet

(possibly on EPA's Web site). Would you find this approach more or less useful than the current process?

2. Do you foresee any problems/issues with reviewing EISs that are made available only on the Internet?

3. In your opinion, how long should EISs remain accessible to the public?

Please submit your responses to the above questions to: Robert Hargrove, Director, NEPA Compliance Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, (2252A), Washington, DC 20460; or hargrove.robert@epa.gov, by COB February 28, 2011.

Dated: January 11, 2011.

Susan E. Bromm,

Director, Office of Federal Activities.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9252-9]

Notice of a Project Waiver of Section 1605: (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Inland Empire Utilities Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605(a) under the authority of Section 1605(b)(2) (manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality) to the Inland Empire Utilities Agency (IEUA), a Clean Water State Revolving Fund (CWSRF)/ARRA loan recipient, for the purchase of Air Release Vacuum (ARV) Valves manufactured by A.R.I. in Israel, for Project #5176-140 funded by the California CWSRF/ARRA Loan #08-851. This is a different project than Project #5176-110/5176-130 which was previously issued a waiver for this same product. The IEUA indicates that the design for the Church Street lateral project includes A.R.I. valves, which are the standard air relief structures used within the regional pipeline system, and that currently there is not a comparable domestic equivalent that meets the IEUA specifications. This is a project-specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for

a separate waiver based on project-specific circumstances. The Assistant Administrator of the Office of Administration and Resources Management has concurred with this decision to make an exception under section 1605(b)(2) of ARRA.

DATES: *Effective Date:* November 30, 2010.

FOR FURTHER INFORMATION CONTACT: Abimbola Odusoga, Environmental Engineer, Water Division, Infrastructure Office (WTR-4), (415) 972-3437, U.S. EPA Region 9.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Sections 1605(c) and 1605(b)(2), EPA hereby provides notice it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111-5, Buy American requirements, to the IEUA for the acquisition of the ARV valves manufactured in Israel by A.R.I. The head of each federal agency is authorized to issue project waivers pursuant to Section 1605(b) of ARRA. Section 1605(a) of the ARRA requires that none of the funds appropriated or otherwise made available by the ARRA may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Pursuant to Section 1605(b), a waiver from this requirement may be provided if EPA determines: (1) Applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

A Delegation of Authority Memorandum was issued by the EPA Administrator on March 31, 2009 which provided EPA Regional Administrators with the authority to issue waivers to Section 1605(a) of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual recipients of ARRA financial assistance.

The IEUA provides drinking water and waste water treatment services to municipalities in the Chino Basin. The Church Street lateral project consists of approximately 4,200 linear feet of 12-inch diameter recycled water pipeline that will convey recycled water to serve customers in the 1430 and 1630 pressure zones. Project specifications

provided by the applicant state that acceptable products are A.R.I. Flow Control Accessories, Ltd. (Model D-060) or an approved equal.

The functional justification for these specifications advanced by the IEUA was that the IEUA had, in years prior to the enactment of ARRA, made the ARI valves their standard air relief structures used within the regional pipeline system based on the IEUA's determination that these valves had a superior design, functionality, and ease of maintenance. Specifically:

- ARI combination valves (D-060's) have the air release on the top of the valve, whereas alternative valves have the air release on the side. A side release creates an internal air pocket on the valve, which allows the rubber seal for the vacuum component to dry out and leak over time.
- The 316SS float for the ARI vacuum component stops against a 316SS ring. The alternative valves have a float that stops against a flat rubber seal on the top of the valve, and constant pounding during closure tends to crack the seal and cause leaks.
- The ARI valves are half the weight and size of the alternative valves, which makes installation and maintenance easier. Also, as the valves are smaller, the enclosures for the valves are less expensive.

The consequences of finding the IEUA's specifications not justified would include the following:

- Additional design costs would be incurred to change all ARV valves, including re-calculating the size of the valves based on the competitors design criteria, modifying valve and enclosure details, and modifying the pipeline profiles to accommodate larger valves. Alternative ARV valves that must be buried would require lowering the pipeline depth several feet on each side of the valves to accommodate a deeper valve vault.
- Construction costs would be higher due to the increase in valve sizes, larger enclosures, and a deeper pipeline. The pricing through the change order process would be significantly higher than prices for a competitive bid. The cost for the material and installation of the valves is approximately \$198,708. If the ARI valves are replaced with alternative valves, the estimated cost for the material and installation would be approximately \$100,000 more.
- IEUA staff would have to be trained on the different types of valves installed and additional spare parts would need to be ordered and stocked. Since the IEUA has moved forward with implementing the ARI valves as the