

March 2015

American Iron & Steel Requirement for the Clean Water and Drinking Water State Revolving Funds

Q&A Part 3

*For CWSRF and DWSRF: On **January 17, 2014**, Public Law 113-76, the "Consolidated Appropriations Act, 2014," was enacted and included an American Iron and Steel requirement for the Clean Water and Drinking Water State Revolving Fund programs through the end of fiscal year 2014. Since then, the AIS requirement has continued for both programs, but through different statutes, with a few changes as described in the questions and answers provided below.*

*For CWSRF: On **June 10, 2014**, the Water Resources Reform and Development Act amended the Clean Water Act to include permanent requirements for the use of AIS products in CWSRF assistance agreements. Section 608 of the CWA now contains requirements for AIS that repeat those of the Consolidated Appropriations Act, 2014. All CWSRF assistance agreements must comply with Section 608 of the CWA for implementation of the permanent AIS requirement.*

*For DWSRF: On **December 16, 2014**, the President signed Public Law 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015," which provides fiscal year 2015 full-year appropriations through September 30, 2015. This law continues the requirement for the use of AIS products in DWSRF assistance agreements through September 30, 2015.*

CWSRF PROGRAM

- 1. Q: The Water Resources Reform and Development Act amended the Clean Water Act to include permanent requirements for the use of AIS for CWSRF funded assistance agreements. Does the CWA include an exemption for plans and specifications approved prior to the enactment of the legislation similar to the exemption included in the Consolidated Appropriations Act (CAA) 2014?**

A: Yes. The WRRDA amendment to the CWA, which included AIS requirements, included a similar exemption as the CAA 2014. For any CWSRF assistance agreement signed on or after October 1, 2014, if the plans and specifications were approved prior to June 10, 2014 (the enactment of WRRDA), then the project is exempt from AIS requirements. For assistance agreements signed prior to October 1, 2014, the previous dates in the CAA 2014 apply (see March 20, 2014, AIS guidance document).

If a project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the plans and specifications approval date for purposes of this exemption in Section 608 (f).

The following table summarizes AIS exemptions based on the plans and specifications approval date for CWSRF funded projects.

CWSRF AIS Project Exemption Based on Plans and Specifications Approval Date		
<u>Assistance Agreement Signed:</u>	<u>Exempt from AIS if Plans and Specifications Were Approved Before:</u>	<u>Basis for Exemption:</u>
1/17/2014 through 9/30/2014	4/15/2014	<ul style="list-style-type: none"> • Consolidated Appropriations Act 2014 • National waiver signed 4/15/2014*
On or after 10/1/2014	6/10/2014	<ul style="list-style-type: none"> • Clean Water Act Section 608

** To be covered by the national waiver, the plans and specifications had to be submitted to the state prior to 1/17/2014*

2. Q: Does the AIS requirement apply to refinanced CWSRF projects?

A: Yes, in some cases. If a project began construction, financed from a non-CWSRF source prior to June 10, 2014, but is refinanced through a CWSRF assistance agreement executed on or after October 1, 2014, AIS requirements will apply to all construction that occurs on or after June 10, 2014, through completion of construction, unless engineering plans and specifications were approved by the responsible state agency prior to June 10, 2014. For CWSRF projects funded on or after October 1, 2014, there is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to June 10, 2014.

DWSRF PROGRAM

3. Q: The Consolidated and Further Continuing Appropriations Act 2015 continues the AIS requirements for DWSRF funded assistance agreements. Does the Act include an exemption for plans and specifications approved prior to the enactment of the legislation, similar to the exemption included in the Consolidated Appropriations Act (CAA) 2014?

A: Yes. The Consolidated and Further Continuing Appropriations Act 2015 includes a similar exemption as the CAA 2014. For any assistance agreement signed on or after December 16, 2014 (the enactment of the Act), if the plans and specifications were approved prior to December 16, 2014, then the project is exempt from the AIS requirements. For assistance agreements signed prior to December 16, 2014, the previous dates in the CAA 2014 apply (see March 20, 2014 AIS guidance document).

If a project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the plans and specifications approval date for purposes of the exemption in Section 424(f).

4. Q: Do DWSRF assistance agreements signed during the time period between September 30, 2014, and December 16, 2014, still have to comply with the AIS requirements?

A: Yes. The Continuing Appropriations Resolution 2015 was signed on September 19, 2014, which extended funding for the DWSRF with the same conditions that were made applicable by the language in the Fiscal Year 2014 appropriations, including the requirement for the use of American Iron and Steel products in projects receiving financial assistance from the DWSRF. Therefore, all assistance agreements starting October 1, 2014, through the enactment of the Consolidated and Further Continuing Appropriations Act 2015 (signed December 16, 2014), must include the AIS requirements. However, if the plans and specifications for any of these projects were approved prior to April 15, 2014 (the date the national waiver was signed), then the project is exempt from the AIS requirements.

The following table summarizes AIS exemptions based on the plans and specifications approval date for DWSRF funded projects.

DWSRF AIS Project Exemption Based on Plans and Specifications Approval Date		
<u>Assistance Agreement Signed:</u>	<u>Exempt from AIS if Plans and Specifications Were Approved Before:</u>	<u>Basis for Exemption:</u>
1/17/2014 through 9/30/2014	4/15/2014	<ul style="list-style-type: none"> Consolidated Appropriations Act 2014 National waiver signed 4/15/2014*
10/1/2014 through 12/15/2014	4/15/2014	<ul style="list-style-type: none"> Continuing Appropriations Resolution 2015 (continued CAA 2014 requirements)** National waiver signed 4/15/2014*
12/16/2014 through 9/30/2015	12/16/2014	<ul style="list-style-type: none"> Consolidated and Further Continuing Appropriations Act 2015

* To be covered by the national waiver, the plans and specifications had to be submitted to the state prior to 1/17/2014

** Following the first continuing resolution, there were two additional CRs to fill the gap between 12/11/2014 and 12/16/2014

5. Q: Does the AIS requirement apply to refinanced DWSRF projects?

A: Yes, in some cases. If a project began construction, financed from a non-DWSRF source prior to December 16, 2014, but is refinanced through a DWSRF assistance agreement executed on or after December 16, 2014, AIS requirements will apply to all construction that occurs on or after December 16, 2014, through completion of construction, unless engineering plans and

specifications were approved by the responsible state agency prior to December 16, 2014. For DWSRF projects funded on or after December 16, 2014, there is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to December 16, 2014.

BOTH CWSRF AND DWSRF PROGRAMS

6. **Q: If a coating is applied to the external surface of a domestic iron or steel component, and the application takes place outside of the United States, would the product be compliant under the AIS requirements?**

A: Yes. The product would still be considered a compliant product under AIS requirements. Any coating processes that are applied to the external surface of iron and steel components that would otherwise be AIS compliant would not disqualify the product from meeting the AIS requirements regardless of where the coating processes occur, provided that final assembly of the product occurs in the United States.

The exemption above only applies to coatings on the *external surface* of iron and steel components. It does not apply to coatings or linings on internal surfaces of iron and steel products, such as the lining of lined pipes. All manufacturing processes for lined pipes, including the application of pipe lining, must occur in the United States for the product to be compliant with AIS requirements.