



ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9052-8]

Amended Environmental Impact Statement Filing System Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is amending its Environmental Impact Statement (EIS) Filing System Guidance. The purpose of the EPA EIS Filing System Guidelines is to provide guidance to Federal agencies on filing EISs, including draft, final, and supplemental EISs.

DATES: The amended EIS Filing System Guidance is available on the date of publication of this notice.

ADDRESSES: The amended EIS Filing System Guidance is available via the internet at <https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance>.

FOR FURTHER INFORMATION CONTACT: Julie Roemele, NEPA Compliance Division, Office of Federal Activities, Mail Code 2203A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202-564-5632; fax number: 202-564-0070; email address: roemele.julie@epa.gov.

SUPPLEMENTARY INFORMATION:

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 1506.10, 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provided on: (1) how to file EISs; (2) the steps to follow when a Federal agency is adopting an EIS, or when an EIS is withdrawn, delayed or reopened; (3) public review periods; (4) issuance of notices of availability in the Federal Register; and (5) retention of filed EISs.

The guidelines published today update the previous guidelines, which were first published in the Federal Register on August 24, 2012. These updated guidelines have been modified to incorporate changes necessary to make it consistent with the updated CEQ NEPA regulations. 85 FR 43304 (July 16, 2020).

Purpose

Pursuant to 40 CFR 1506.10 and 1506.11, 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 electronic EIS database; (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.”

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 1506.10.

As of October 1, 2012, Federal agencies file an EIS by submitting the complete EIS, including appendices, to EPA through the e-NEPA electronic filing system.

Please note that if a Federal agency prepares an abbreviated Final EIS (as described in 40 CFR 1503.4(c)), it should include a new cover sheet on the Draft EIS when filing it as the Final EIS. To sign up for e-NEPA, register for an account at <https://cdx.epa.gov/>, select “NEPA Electronic Filing System (e-NEPA)” when prompted to add a program. Inquiries can also be made to: (202) 564-5632 or (202) 564-4462 or by email to: EIS-filing@epa.gov. The *e-NEPA Guide on Registration and Preparing an EIS for Electronic Submission* is available on EPA’s website at <https://www.epa.gov/nepa/e-nepa-guide-registration-and-preparing-eis-electronic-submission>. EPA recommends that filers review this guidance before filing the EIS to ensure that the documents are properly formatted and meet the file size requirements.

Once received by EPA, each EIS is assigned 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.

The EIS submittal deadline is on Mondays at 10:00 AM Eastern Time for publication that same week in Friday’s Federal Register. When Mondays are designated federal holidays, the

deadline will be 10:00 AM Eastern Time of the Friday before the federal holiday until further notice.

The EISs must be filed no earlier than they are transmitted to participating agencies and made available to the public (40 CFR 1506.10). 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 by the lead agency, EPA will issue a notice with the weekly NOA 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 1506.10, and has completed the transmittal process, EPA will reestablish the filing date and the minimum comment or review period, and will publish this information in the next NOA. Requirements for publication of EISs appear in 40 CFR 1502.20. Please note that the EIS submitted to the Office of Federal Activities through e-NEPA is only for filing purposes.

Adoptions

EPA must be notified 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 republished and filed with EPA according to the requirements set forth in 40 CFR 1506.3(b)(1). 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 (40 CFR 1506.3(b)(2)), the document does not need to be republished 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. Notifications can be sent by email to: EIS-filing@epa.gov. Official notification is a signed letter on agency letterhead by an appropriate approving official. EPA will publish a NOA in the Federal Register that states that an adoption has occurred. This will not establish a comment or review period, but will complete the public record.

Withdrawing, Delaying, or Reopening a Comment or Review Period

EPA should also be notified of all situations where an agency has decided to withdraw, delay, or reopen a comment or review period on an EIS. Notifications can be sent by email to: EIS-filing@epa.gov. Official notification may be a signed letter on agency letterhead by an appropriate approving official or a copy of the agency's published Federal Register public notice detailing a withdraw, delay or a reopening of a comment or review period. All such notices to EPA will be reflected in EPA's weekly NOA published in the Federal Register. In the case of reopening an EIS comment or 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 EISs that are being reopened after a substantial amount of time has passed since the original comment or review period closed.

Notice in the Federal Register

EPA will prepare a weekly report of all EISs filed during the preceding week for publication each Friday under an 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 comment or review periods of previously filed EISs, withdrawals of EISs by lead agencies, and retractions of EISs by EPA.

Comment/Review Periods

The minimum time periods set forth in 40 CFR 1506.11 (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, unless otherwise provided by law. If a calculated comment or review period ends on a weekend or holiday, then the comment or review period would end on the next Federal business day. While these comment or review periods are minimum time periods, a lead agency may establish longer comment or review periods when filing the EIS through e-NEPA.

If the lead agency extends the comment or review period after the publication of EPA's NOA, it must notify EPA of the extended comment or review period by submitting an official notification to EPA Office of Federal Activities. Official notification may be a signed letter on agency letterhead by an appropriate approving official or a copy of the agency's published Federal Register public notice detailing a comment or review period extension. For more detail on the process, please contact EIS-Filing@epa.gov.

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 EPA's NOA in the Federal Register. If the published date gives reviewers less than the minimum review time

computed by EPA, EPA will contact the agency explaining how the comment/review period is calculated and the correct date by which comments are due back to the lead agency. In these cases, EPA encourages agencies to notify all reviewers and interested parties of the corrected comment/review periods.

It should be noted that 40 CFR 1506.11(c) 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 when the agency determines to run the period for appeal of the decision concurrent with the 30-day review period so that it can be coordinated with EPA's NOA publication in the Federal Register.

Moreover, under 40 CFR 1506.11(e), EPA has the authority to extend or 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 comment or review 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. These requests can be submitted by email to: EIS-filing@epa.gov. A meeting to discuss the consequences for the project and any decision to change comment or review 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 comment or review period modification from interfering with the lead agency's schedule for the EIS. EPA will notify CEQ of any reduction or extension granted.

Retention

Filed EISs are retained in the EPA EIS database and made available to the public through EPA's website. After a total of fifteen (15) years the EISs are transferred to the National

Archives Records Administration. The retention schedule does not affect the availability of these electronic copies.

Dated: September 14, 2020.

Cindy S. Barger,
Director, NEPA Compliance Division,
Office of Federal Activities.
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