

# 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

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A Notice by the Environmental Protection Agency on 08/24/2012

## 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provided on: (1) How to file EISs; (2) the steps to follow when a Federal agency is adopting an EIS, or when an EIS is withdrawn, delayed or reopened; (3) public review periods; (4) issuance of notices of availability in the Federal Register; and (5) retention of filed EISs.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 March 7, 1989. These updated guidelines have been modified to incorporate changes necessary to implement the *e-NEPA* electronic filing system.

## 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**. 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.

To sign up for *e-NEPA*, register for an account at: [https://cdx.epa.gov/epa\\_home.asp](https://cdx.epa.gov/epa_home.asp)

Select “NEPA Electronic Filing System (*e-NEPA*)” when prompted to add a program. Inquiries can also be made to: (202) 564-7146 or (202) 564-0678 or by email to: [EISfiling@epa.gov](mailto:EISfiling@epa.gov).

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.

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 EIS submitted to the Office of Federal Activities through *e-NEPA* is only for filing purposes.

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 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. Notifications can be sent by email to: [EISfiling@epa.gov](mailto:EISfiling@epa.gov). 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. Notifications can be sent by email to: [EISfiling@epa.gov](mailto:EISfiling@epa.gov). 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 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.

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. 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.

## **5. 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 through *e-NEPA* or by email to: [EISfiling@epa.gov](mailto:EISfiling@epa.gov) 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. These requests can be submitted by email to: [EISfiling@epa.gov](mailto:EISfiling@epa.gov). 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.

## **6. Retention**

Filed EISs are retained in the *e-NEPA* Filing system for two years. 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).

Please note that EPA maintains a Web site that will make available copies of the filed EISs to the public. The retention schedule does not affect the availability of these electronic copies.

Dated: August 21, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

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