

Distribution and Electronic Filing of EISs with EPA

Electronic Filing of EISs with the EPA

This BLM guidance clarifies the requirements for electronic filing and offers practical tips based on BLM's experience with e-NEPA. As discussed below, electronic filing in *e-NEPA* is also required when a federal agency adopts an EIS prepared by another agency and the adopting agency has not served as a cooperating agency. All BLM offices should file draft or final EISs, including appendices, using the EPA's *e-NEPA* electronic filing system where it applies. On October 1, 2012, EPA required agencies to file EISs electronically through EPA's *e-NEPA* system pursuant to 40 CFR § 1506.9(a), and stopped accepting paper copies of EISs from federal agencies. The electronic filing requirements did not change the Council on Environmental Quality (CEQ) and EPA requirements for the timing of filing (i.e., at least 7 days before the Friday EPA publishes its weekly *Federal Register* notice of EISs received) or for the distribution of EISs to other agencies and the public, which must continue to be done prior to filing of the EIS under 40 CFR 1506.9(c). In addition, EPA Regional Offices still require paper copies of EISs to facilitate their review.

EPA's Notice of Availability

The *e-NEPA* electronic filing system has not changed the timing or requirements for how EPA notifies the public of EISs filed by federal agencies. Every Friday, the EPA publishes a *Federal Register* Notice of Availability (NOA) identifying the EISs filed by federal agencies during the preceding week. (If a federal holiday falls on a Friday, the NOA is published on the immediately preceding Thursday.) EPA also transmits the NOA to CEQ on the date of the *Federal Register* publication. The publication date of the EPA's NOA is the official date used to calculate the time period for public review and/or submitting public comments under 40 CFR § 1506.10; 43 CFR § 46.415(c); 43 CFR §§ 1610.5-1 and 1610.5-2. The minimum time frames include:

- 45 days for a draft EIS
- 90 days for draft Resource Management Plan (RMP) and plan amendment EISs
- 30 days for filing a protest of a Proposed RMP or amendment
- 30 days (minimum) for a final project EIS prior to approval of a Record of Decision

Distributing EISs to EPA Regional Offices

The EPA amended guidance has not changed the requirements for distributing EISs to EPA Regional Offices. EPA Regional Offices prefer to receive at least one paper copy of each EIS filed in *e-NEPA*. It is advisable to contact the applicable Regional Office to determine how many copies of an EIS it would prefer.

E-Mail Notification and Electronic Filing for Adopting Another Agency's EIS

Consistent with 40 CFR § 1506.3, in support of its own decision-making process, the BLM may adopt a draft or final EIS (or a portion thereof) prepared by another agency if the EIS meets all applicable CEQ, DOI, and BLM requirements. Section 5.4 of the BLM NEPA Handbook (H-1790-1) summarizes the requirements and procedures for adopting a NEPA document prepared by another agency. The procedures and requirements for notifying EPA vary depending on whether or not the BLM served as a cooperating agency in the preparation of the other agency's EIS.

If the BLM served as a cooperating agency in the preparation of another agency's EIS, the BLM may adopt that EIS without separately circulating it for review and comment, provided that the BLM finds that its comments and suggestions have been satisfied (40 CFR § 1506.3(c)). In this situation, there is no need for the BLM to re-file the EIS in *e-NEPA*. The BLM must notify the EPA by e-mail to: EISfiling@epa.gov that BLM has adopted the EIS. The EPA will publish an amended NOA in the *Federal Register* announcing the adoption of the EIS to complete the public record. This action does not change the comment period. In this situation, the BLM does not need to publish its own NOA in the *Federal Register* announcing that it has adopted the EIS.

If the BLM wishes to adopt another agency's EIS for which it was not a cooperating agency in the preparation thereof, the BLM must recirculate the document, consistent with the requirements in Sections 5.4.1 (p. 32) and 9.3 (p. 99) of the BLM NEPA Handbook (H-1790-1). In these situations, the BLM is required to file the EIS electronically in *e-NEPA* and should also publish its own NOA in the *Federal Register* announcing that it has adopted the EIS.

Distributing EISs to Other Agencies and the Public

CEQ's NEPA regulations still require agencies to provide notice of the availability of environmental documents to inform other agencies and the public (40 CFR § 1506.6(b)); the October 2012 EPA guidance has not changed these requirements. In addition, CEQ regulations direct that EISs "be filed with the EPA no earlier than they are also transmitted to commenting agencies and made available to the public" (40 CFR § 1506.9(c)). The EPA amended guidance explains that this timing "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." 77 Fed. Reg. at 51531.

DOI Office of Environmental Policy and Compliance, Environmental Statement Memorandum (ESM) No. 13-2, "Approving and Filing Environmental Impact Statements," Section 6(c) (January 7, 2013), further states: "Prior to filing an EIS with EPA, bureaus and offices are to distribute the document to federal agencies with jurisdiction by law or special expertise and to state and local agencies, including Indian Tribes, which are authorized to set and enforce related environmental standards, and to make it available to the public." ESM No. 13-2 directs the responsible official to "promptly" provide copies to the U.S. Department of the Interior Natural Resources Library), 1849 C Street NW, Washington, DC 20240, upon transmittal.

Timing the Distribution of EISs

The establishment of EPA's electronic filing system does not change the CEQ requirements for distribution of EISs (40CFR 1506.9(c)). In order to ensure compliance with CEQ's filing requirements, the EPA electronic filing system has a step that requires that all agencies certify that this distribution has occurred when filing an EIS with EPA. The intent of this provision of the regulation is to ensure that commenting agencies and the public have a copy of the EIS before or on the day the comment period begins. Because many reviewers continue to rely on receiving paper copies of EISs, it is advisable to distribute the EIS to everyone prior to filing with EPA, recognizing that delivery of hard copies through the mail typically takes several days, whereas posting on a website is virtually instantaneous. It is left to the BLM field offices how to meet this requirement.

The BLM recognizes that making EISs available to all interested agencies and other parties at the same time fosters consistent and effective communications. The communications package (press release, etc.) should be released at the same time as the documents are uploaded to the eNEPA site. Accordingly, BLM offices that file an EIS with the EPA should make it available to all interested agencies and other parties by posting it to the appropriate BLM website(s) and distributing it by e-mail to interested agencies and other parties prior to the day of publication of the EPA NOA. The EPA NOA appears online the morning before the day of publication on the *Federal Register's* Electronic Public Inspection Desk: <http://www.archives.gov/federal-register/public-inspection/>

Coordination of Electronic Filing with BLM Notices and Public Announcements

The BLM NOA provides useful information about a project or planning action that is not contained in the EPA's weekly NOA. This information includes the background and a summary of a project and/or plan, contact information, and timing of the comment period.

BLM staff preparing a draft or final EIS should coordinate as early as possible with the appropriate Office of Communications contacts (e.g., Public Affairs or External Affairs Officer) in the state office on the timing of: (1) the electronic filing of an EIS in *e-NEPA* for publication of the EPA's NOA in the *Federal Register* on the following Friday; (2) the publication of a separate BLM NOA for the EIS (which should include the date of publication of the EPA's NOA); *Federal Register* and (3) any public announcements, news releases, or media events, including those coordinated by the BLM State Office, the BLM-WO, the BLM Director's Office (WO-100), or the DOI.

If a BLM office plans to publish an NOA of the draft or final EIS in the *Federal Register*, it should not file the document with the EPA until the Department has approved publication of the BLM's NOA. The state office, in turn, should coordinate with the BLM-WO Communications and program staffs (e.g., Planning and NEPA for planning decisions, Fluid Minerals, Renewable Energy) if an EIS involves a priority project or initiative and/or if there is a high level of national interest.

Suggestions for Successful Electronic Filing

As described in the attached EPA guide, “*e-NEPA* Electronic Submittal of Environmental Impact Statements to EPA,” each office first should register for an *e-NEPA* electronic filing system account in the EPA’s “CDX” system (https://cdx.epa.gov/epa_home.asp), complete the requested information, submit a request for access, and activate the account. The BLM offices also should follow the guide’s tips for preparing EISs for electronic filing and submission of the documents. In addition, BLM offices responsible for filing EISs should:

- Register in the CDX system, which the EPA uses for several programs in addition to *e-NEPA*, 2-3 weeks before an EIS is slated for publication. This will allow time to account for any delay that may occur due to technical difficulties or in EPA’s processing or confirmation of your registration.
- Have at least two individuals from an office (e.g., Planning & Environmental Coordinator, NEPA Specialist, or Project Manager) register in the CDX system to ensure coverage in the event that one person is out of the office when a filing needs to be made.
- For the “organization information” section of the registration, provide the office’s specific information (address, field office/state office name, phone number). If someone else from an office has previously registered, the office information should be saved on the website.
- Consolidate maps and documents into volumes or PDF Map Books to avoid the need to upload each individual document separately.
- When working with an environmental consulting firm that is preparing an EIS under a direct or third-party contract, build sufficient time into the schedule for document preparation to enable the BLM to file the EIS with the EPA. *e-NEPA* is currently open only to government employees; contractors are not allowed to file EISs in the system.
- Share any questions about electronic filing and any problems experienced with *e-NEPA* with WO-210 through the contacts provided below. WO-210 will follow up with the EPA as appropriate.

As a result of website improvements, *e-NEPA* now saves upload progress. If a submission times out, the system will save progress and prompt the submitter to resume the submission upon logging back in. It is no longer necessary to divide the file upload into multiple submissions. To eliminate unnecessary administrative work compiling multiple submissions, please upload all of the PDF files at once rather than creating multiple submissions.

EPA recommends against dividing EIS documents into many PDF files prior to submittal, this should make filing easier. It is not uncommon for EPA to receive submissions with over 100 individual files, many of which are quite small and could be combined while staying within the system’s 50MB file size limit. The time required to file EIS documents can be dramatically reduced by maximizing file sizes as close as possible to 50MB.

From a reviewer standpoint, breaking EISs into a large number of smaller files can make it difficult to review the EIS in a comprehensive manner – opening and closing files can become unmanageable.

EIS-Related E-Mail Notifications to the EPA

The EPA amended guidance directs federal agencies to provide the EPA with e-mail notification in some situations where electronic filing of an EIS is not necessary. All BLM offices are directed to comply with the following EPA notification requirements as well.

As outlined above, when a federal agency adopts an EIS prepared by another agency but has served as a cooperating agency, there is no need to circulate the EIS for review or refile it in *e-NEPA*. However, the adopting agency should notify the EPA by e-mail to: EISfiling@epa.gov. In these circumstances, the EPA will publish an amended NOA in the *Federal Register* announcing the adoption of the EIS to complete the public record, even though no comment period will ensue.

An agency that has decided to withdraw, delay, or reopen the review period for an EIS also should notify the EPA by e-mail to: EISfiling@epa.gov. The notification should include the steps planned to ensure that the EIS is available to all interested parties, particularly if substantial time has passed since the initial review period ended. The EPA will include the change in its weekly NOA on EISs received.

Availability of EISs through *e-NEPA*

EISs filed in *e-NEPA* are available to the public electronically on an EPA web site. Because these EISs are readily accessible, the DOI Office of Environmental Policy and Compliance is no longer assigning control numbers for tracking purposes.