

27 March 1997

Re: NEPA Call-In Technical Inquiry 0048 - Public Notification
Procedures

Dear NEPA Call-In User:

This letter is in response to your March 17, 1997 inquiry requesting public notification procedures for a supplement to a final environmental impact statement (EIS). Specifically, you asked how the public should be notified and what is the duration of the public comment period.

NEPA Call-In reviewed the Council on Environmental Quality (CEQ) regulations which implement the National Environmental Policy Act (NEPA), Title 40 Code of Federal Regulations (CFR) Part 1500-1508, "Council on Environmental Quality" (enclosed). According to Title 40 CFR 1502.9(c)(4), "Agencies shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council."

We also reviewed GSA documents ADM 1095.1E, "Environmental Considerations in decisionmaking"; and PBS P 1095.4B, "PBS Preparation of Environmental Assessments and Environmental Impact Statements." ADM 1095.1E canceled PBS P 1095.4B but states it may be employed on an interim basis until a revised PBS order is issued, which has not yet been done. Both of these documents may be downloaded from our World Wide Web page a (www.gsa.gov/pbs/pt/call-in.nepa.htm), or obtained by contacting NEPA Call-In.

PBS P 1095.4B, Chapter 4, Part 3, Section 18(b), "Preparation of supplemental draft or final EIS's," states "If a supplemental EIS is required it must be prepared, processed, and circulated for public review in the same manner as the draft [or] final EIS."

The distribution requirements for a draft or final EIS are contained in Title 40 CFR Part 1502.19, "Circulation of the environmental impact statement," which states that the EIS shall be distributed to:

"(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft."

Further, Title 40 CFR 1506.6, "Public involvement," states agencies shall: "Provide public notice of...the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

- (1) In all cases the agency shall mail notice to those who have requested it on an individual action.
- (2) In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.
- (3) In the case of an action with effects primarily of local concern the notice may include:
 - (i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised);
 - (ii) Notice to Indian tribes when effects may occur on reservations;
 - (iii) Following the affected State's public notice procedures for comparable actions;
 - (iv) Publication in local newspapers (in papers of general circulation rather than legal papers);
 - (v) Notice through other local media;
 - (vi) Notice to potentially interested community organizations including small business associations;
 - (vii) Publication in newsletters that may be expected to reach potentially interested persons;
 - (viii) Direct mailing to owners and occupants of nearby or affected property; and
 - (ix) Posting of notice on and off site in the area where the action is to be located."

PBS P 1095.4B, Chapter 6, "Public Information and Involvement," contains a table indicating the required distribution of EISs (enclosed). It states the final EIS should be sent to "all parties who made substantive comments on the draft EIS or who requested the final EIS and to the following:

- a. Public Works committees of the Congress (prospectus projects only) (2 copies)
- b. Office of Management and Budget (prospectus projects only) (2 copies)
- c. U.S. Senators of States affected
- d. U.S. Representatives of district(s) affected
- e. Client agency
- f. Environmental Protection Agency headquarters (5 copies)
- g. Regional Office of EPA (5 copies)."

The duration of the public comment period is detailed in Title 40 CFR

1506.10, "Timing of agency action":

"(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under Section 1505.2 by a Federal agency until the later of the following dates:

- (1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.
- (2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement. An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods."

NEPA Call-In also contacted Mr. Matthew McMillan, Staff Scientist, Energetics Corporation, (202) 479-2748. Mr. McMillan concurred with the above on distribution of supplemental EIS, and that no Draft Supplemental EIS is prepared, only the Final Supplemental EIS. He also added that comments on the Supplemental EIS are not required to be included in the Final EIS unless the comments are controversial.

In summary, the method of distribution and the duration of the public comment period for a supplement to an EIS is the same as for a Draft or Final EIS.

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Sincerely,

(Original Signed)

NEPA Call-In Researcher