

April 1999

Re: NEPA Call-In Technical Inquiry 0515 - Who is responsible for publishing a No

This letter is in response to your April 21, 1999 request for information regarding who is responsible for publishing a notice of intent (NOI) to prepare a GSA Environmental Impact Statement (EIS) in the Federal Register. You wanted to know if GSA must forward the NOI to the U.S. Environmental Protection Agency (EPA) for EPA to publish in the Federal Register. You are a contractor to GSA Region 2. In a follow-up conversation with you on April 22, 1999, you also wanted to know when a GSA Regional Administrator (RA) must sign NEPA-related documents.

SUMMARY OF FINDINGS

Notices of intent to prepare EISs should be published in the Federal Register by GSA representatives. RAs are responsible for decisions on NEPA actions within their jurisdiction and, therefore, are required to sign Findings of No Significant Impact (FONSI) and Records of Decision (ROD). Our detailed findings are presented below.

DETAILED FINDINGS

In previous Technical Inquiries (TIs) on this subject, NEPA Call-In has determined NOIs for GSA EISs may be forwarded to Ms. Marjorie Ashby, Office of Acquisition Policy, GSA National Office, (202) 501-3822, for assistance in publishing notices in the Federal Register. Ms. Ashby is responsible for publishing notices in the Federal Register on behalf of GSA. GSA regions may also choose to file notices in the Federal Register directly.

The Office of the Federal Register Director, National Archives and Records Administration, (202) 523-4534, has guidance on how to prepare Federal Register notices and other documents, entitled "The Document Drafting Handbook," which can be found on the Internet at: www.nara.gov/nara/fedreg/ddh/ddhout.html. Federal Register notices should be submitted exactly as they are to appear and sent to the attention of Mr. Raymond Mosley, Director, The Federal Register, National Archives and Records Administration, 7th and Pennsylvania Avenue, N.W., Washington, D.C. 20408.

NEPA Call-In then reviewed EPA's Office of Federal Activities (OFA) world wide web site to locate information about filing NEPA-related documents with EPA. We reviewed the document, "EIS Filing System Guidance" located on OFA's web site at es.epa.gov/oeca/ofa/eisguid.html. According to this document, EPA is only responsible for filing the notice of availability (NOA) for draft and final EISs. It is important to note that the public review "time clock" for EISs does not begin until such time that EPA publishes its NOA in the Federal Register for GSA EISs.

NEPA Call-In then reviewed the Council on Environmental Quality (CEQ) regulations for NEPA in Title 40 Code of Federal Regulations Parts 1500-1508 but did not locate any information that would require filing a NOI with the EPA. We also reviewed GSA's NEPA implementation guidance contained in the PBS NEPA Desk Guide, Interim Guidance, September 1997 (including amendments as of October 1, 1998) but did not locate any information that would require NOIs to be filed by EPA. Therefore, it appears that GSA must submit its own NOIs to the Federal Register for publication.

Regarding your question about when a GSA RA must sign NEPA-related documents, NEPA Call-In again reviewed the PBS NEPA Desk Guide. Chapter 2, "Basic Requirements and Responsibilities," Section 2.2.1.3, "Regional Administrators," states RAs:

- are accountable for execution of GSA's responsibilities under NEPA and related authorities with respect to actions under their jurisdiction; and
- serve as the responsible agency official under Council on Environmental Quality (CEQ) regulations with respect to the environmental effects of actions under their jurisdiction.

We also reviewed the CEQ document, "40 Most Frequently Asked Questions Concerning CEQ's NEPA Regulations" located on the CEQ world wide web site at ceq.eh.doe.gov/nepa/nepanet.htm. Question 4C, "Who recommends or determines the preferred alternative?", provides the answer that:

"The lead agency's official with line responsibility for preparing the EIS and assuring its adequacy is responsible for identifying the agency's preferred alternative(s). The NEPA regulations do not dictate which official in an agency shall be responsible for preparation of EISs, but agencies can identify this official in their implementing procedures, pursuant to Section 1507.3."

As cited above, the PBS NEPA Desk Guide, which contains GSA's implementing NEPA procedures pursuant to Title 40 Code of Federal Regulations (CFR) Part 1507.3, "Agency procedures," identifies the agency official responsible for NEPA implementation, and therefore responsible for GSA decisions under NEPA, as Regional Administrators. Therefore, it is appropriate for RAs to assume responsibility for GSA decisions by signing NEPA documents that state what the decisions are. These documents include FONSI's prepared subsequent to Environmental Assessments, and RODs, which state agency decisions on Environmental Impact Statements.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(original signed)

NEPA Call-In Researcher