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	U. S. DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVES SYSTEM**	**Subject Number:** REG-5-1 **Transmittal Number:** 621 **Date:** JUN 29 1990

Subject: Processing of Proposed State Regulatory Programs, Amendments and Part 732 Notifications

Approval: [signature] **Title:** Director

Directive REG-5, Transmittal Number 508, dated January 18, 1989, is changed to require that the Assistant Director, Field Operations (AD/EFO and AD/WFO) promptly notify the Assistant Director, Program Policy (AD/PP) of State program amendment-related issues that cannot be resolved between the AD/EFO and AD/WFO and the Field Solicitor and to require that the AD/PP provide assistance and coordination in resolving amendment-related issues for which the AD/EFO and AD/WFO and the Field Solicitor are at an impasse. Also, the responsibilities of the AD/EFO and AD/WFO and the Field Office Director (FOD) have been revised to require the FOD's surname or concurrence on final rules concerning State program amendments. In addition, the State program amendment submission guidelines have been revised and the AD/EFO and AD/WFO has been authorized, under certain circumstances, to return amendment submissions to States.

Specifically, the following changes have been made:

1. Section 4.b.(2), which sets forth the responsibilities of the Assistant Director, Program Policy, is modified by adding a new paragraph (f) to read as follows:

"Provide assistance and coordination to the AD/EFO and AD/WFO in resolving issues resulting from legal reviews of State program amendments by the Field Solicitor."

2. Section 4.b.(3), which sets forth the responsibilities of the Assistant Director, Field Operations, is modified by adding two new sentences to paragraph (a) to read as follows:

<u>Add after first sentence</u>: "In concert with the Field Office Director, promptly conduct a preliminary review of the submission to determine whether it can be evaluated properly in light of State program amendment submission guidelines. If a determination is made that a review is impracticable because the State did not follow in pertinent part the guidelines for submission of State program amendments, the AD/EFO and AD/WFO through the FOD may return the submission with a request that the State provide the omitted, pertinent material specified by the guidelines.

CHANGE NOTICE

3. Section 4.b.(3)(b) is modified by adding a new sentence to read as follows:

Add after first sentence: "Promptly notify the AD/PP of unresolved amendment-related issues resulting from the Field Solicitor's legal reviews."

4. Section 4.b.(3)(f) is revised to read as follows: "Prepare, obtain the Field Office Director's surname or concurrence, and sign all final rules concerning State program amendments, except for final rules pertaining to program conditions codified in 30 CFR 9--.11 or to preemption and supersession of State program provisions. In the case of program conditions, the AD/EFO and AD/WFO shall prepare the final rule and obtain the Field Office Director's surname or concurrence, but shall not sign the rule. He or she shall also prepare, for the Director's signature, a memorandum recommending that the Secretary sign the notice."

5. Section 4.b.(4), which sets forth the responsibilities of the Field Office Directors, is modified by adding a new paragraph (c) to read as follows and relettering current paragraphs (c)-(l) as (d)-(m).

"Surname or otherwise concur in all final rules concerning State program amendments."

6. In Appendix 2, paragraph 1 is revised to read as follows:

1. Submission guidelines.

To expedite the processing of formal submittals, States shall be encouraged to informally submit potential amendments for preliminary review and comment prior to their formal submittal. Submittal of the following elements in any proposed amendment (formal or informal) will expedite amendment processing by OSM:

a. A section-by-section comparison in a side-by-side format of the State's proposed amendment and the Federal regulations, or, alternatively, citation of the corresponding Federal statute or regulation, if any, and an explanation of the differences;

b. Inclusion of the entire section or subsection of the State rule, statute, policy statement or other document being amended;

c. Identification of any conditions of State program approval or required amendments to be satisfied by the proposal;

d. If the revisions significantly differ from the Federal provisions, the rational for the changes, any technical justification for the changes, and their legal effect;

e. Precise identification of the existing language being deleted and the new language being added, e.g., underlining new language and/or bracketing or striking out language to be deleted;

f. Identification of the status of the State submittal as either formal or informal (formal and informal submittals should not be combined in the same submittal); and

g. In any formal proposed amendment, inclusion of a legal opinion from the attorney general of the State or chief legal officer of the State regulatory authority stating that the proposed amendments do not conflict with any other provisions of the existing State laws or regulations.

In light of the above guidelines, the AD/EFO and AD/WFO in concert with the FOD may return a submission to the State, if it is determined that the submission cannot be reviewed without extreme difficulty because the State did not follow in pertinent part these guidelines. If a determination is made that a review is impracticable, the FOD shall promptly (within five days of receipt) return it to the State with a letter listing the specific reasons why it cannot be reviewed, and requesting the State to provide the omitted, pertinent material. If the State fails or refuses to provide the needed element(s), the AD/EFO and AD/WFO shall initiate review of the proposed amendment in accordance with paragraphs 2 and 3 of Appendix 2.

7. In Appendix 2, paragraph 2.b.(2) is changed as follows:

Add after second sentence: "The AD/EFO and AD/WFO shall assure that all issues resulting from the review shall be promptly identified, elevated as necessary, and resolved in order that the submittal may be processed within the timeframes established in Step (9). The AD/EFO and AD/WFO shall notify promptly the AD/PP of unresolved issues resulting from the Field Solicitor's amendment-related review and subsequent discussions. The AD/PP shall provide the necessary assistance and coordination to the AD/EFO and AD/WFO and the Solicitor's Office to resolve any outstanding issues in an expeditious manner."

8. In Appendix 2, paragraph 2.b.(10) is changed as follows:

Add after first sentence: "The FOD shall surname or otherwise indicate his or her concurrence on the final rule."

9. In Appendix 2, paragraph 3.a.(2) is changed as follows:

Add after second sentence: "The AD/EFO and AD/WFO shall notify promptly the AD/PP of unresolved issues resulting from the Field Solicitor's amendment-related review and subsequent discussions."

10. In Appendix 2, paragraph 3.a.(3) is changed as follows:

Add after first sentence: "When the AD/EFO and AD/WFO notifies the AD/PP of unresolved amendment-related issues resulting from the review by the Field Solicitor and subsequent discussions, the AD/PP shall provide the necessary assistance and coordination to the AD/EFO and AD/WFO and the Solicitor's Office to resolve these issues in an expeditious manner."