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	U· S· DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG-5 Transmittal Number: 686 Date AUG 13 1991

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

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

1. PURPOSE.

This directive sets forth policy and establishes procedures for:

a. Reviewing and processing proposed State regulatory programs.

b. Reviewing and processing proposed amendments to approved State regulatory programs.

c. Requiring States to amend their programs following revision of Federal statutes or regulations or the identification of programmatic deficiencies or significant programmatic changes.

2. SUMMARY OF CHANGES.

This directive has been revised to:

a. Establish procedures and criteria for the review, approval, and resolution of issues of a State's timetable for amendment enactment.

b. Reflect the October 1, 1990 realignment of the Office of Surface Mining Reclamation and Enforcement (OSM) by ensuring clear reference to the positions and their associated responsibilities affected by the realignment.

c. Publish the directive in its entirety to incorporate previous modifications. Minor editorial and organizational changes also have been made to ensure consistency throughout the directive.

3. DEFINITIONS.

a. Amendment. As defined in 30 CFR 732.17(a) and (b), an amendment is any alteration of an approved State program other than nonsubstantive changes or minor revisions having no effect upon the implementation of the program. Except for correction of typographical errors and mistakes of a similar nature, changes to State statutes and regulations must be considered and processed as amendments regardless of their significance.

b. Condition. As defined in 30 CFR 732.13(j), a condition is a requirement imposed upon the State by the Secretary at the time of program approval to correct a minor deficiency within a specified period of time. All final rules concerning conditions must be signed by the Secretary or his designee.

c. Final rule. In the context of 30 CFR Parts 731 and 732 and this directive, except as otherwise noted, a Federal Register notice announcing the Director's or Secretary's decision on a proposed State program or State program amendment. With respect to this directive, all Federal Register notices are considered to be in draft form until signed by the appropriate official.

d. Formal submittal. A proposed amendment submitted by a State to OSM for processing under 30 CFR 732.17.

e. Informal submittal. A draft proposed amendment submitted by a State to OSM for review and comment prior to formal submission. This term encompasses only those submissions containing the specific language being considered for the amendment; it does not include requests for comments on general ideas or concepts. Documents pertaining to submission and review of informal submittals shall not be entered into the administrative record.

f. Part 732 notification. A document in which the Director or other designated official notifies the State that its program must be amended to be no less effective than the Federal regulations and no less stringent than SMCRA. Such notification may be necessary as a result of Federal regulation changes, State or Federal court decisions, or problems identified during oversight or other program review processes. Also, when deficiencies identified in a proposed amendment are not resolved prior to publication of the final decision on that amendment, i.e., when the final rule imposes a required amendment, the Federal Register notice containing the final rule shall be considered a Part 732 notification.

g. Proposed rule. In the context of 30 CFR Parts 731 and 732 and this directive, except where otherwise noted, a Federal Register notice announcing receipt of a proposed State program, amendment, or subsequent modifications or explanations thereof. With respect to this directive, all Federal Register notices are considered to be in draft form until signed by the appropriate official.

h. Required amendment. As used in this directive, a requirement, imposed by OSM in a final rule and codified in 30 CFR 9--.16, that the State amend its program to correct a deficiency identified subsequent to program approval (usually as part of the formal submittal review process) or submit further justification of a provisionally approved rule or other

provision. Required amendments may also be imposed by other forms of Part 732 notifications, but they are not generally referenced as such in this directive.

i. State program. A program, established by a State and approved by the Secretary under section 503 of SMCRA and 30 CFR 732.13 to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in accordance with SMCRA and the Federal regulations promulgated pursuant to that statute.

j. Timetable for enactment. In accordance with 30 CFR 732.17(f)(1), a document submitted to OSM by a State regulatory authority within 60 days of the receipt of a Part 732 notification, which accompanies either a description of an amendment to be proposed or a proposed written amendment addressing identified deficiencies. This document provides dates key to State promulgation of the approved amendment, including the date(s) by which a State intends to submit either a formal or an informal proposed written amendment to OSM.

4. POLICY/PROCEDURES.

a. General Policy.

Congress stated in section 101(f) of SMCRA that, because of the diversity in terrain, climate, biologic, chemical and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface mining and reclamation operations should rest with the States. OSM's policy is to encourage the formulation of State programs to meet those conditions and to approve variations from the national regulations if such variations are no less effective than the Federal regulations in meeting the standards of SMCRA.

It is also the policy of OSM to encourage and foster informal communication with States prior to formal submittal of State programs or State program amendments. All interactions, oral or written, should lead toward positive resolution of issues so that, to the extent possible, the formal submittal may be processed within the timeframes established in 30 CFR Parts 731 and 732.

b. Responsibilities.

(1) Director. (Refer to Directive OPM-5 for responsibilities further delegated by the Director)

(a) Sign all proposed rules concerning proposed State programs submitted under 30 CFR Part 731.

(b) Sign any necessary decision memoranda and letters to the State authorizing a specific action (e.g., imposition of grant conditions, initiation of proceedings under 30 CFR Part 733, or other appropriate measures) to be taken to secure an approvable and responsive timetable for enactment in response to a Part 732 notification.

(c) Sign all proposed and final rules concerning preemption or supersession of State statutory, regulatory or other program provisions.

(d) Prepare decision memoranda for the Secretary of the Interior on final rules pertaining to State programs proposed under 30 CFR Part 731, and review and sign similar memoranda prepared by the Assistant Director Support Center (AD/SC) for final rules pertaining to State program amendments involving conditions of approval.

(e) Sign letters notifying the State regulatory authority of the need for program revisions (Part 732 notifications), except those resulting from State notifications under 30 CFR 732.17(b).

(2) Assistant Director, Reclamation and Regulatory Policy (AD/RRP).

(a) Serve as the focal point for reviewing and processing State programs submitted under 30 CFR Part 731, including preparation of all Federal Register notices associated with such submissions.

(b) Review all proposed State program amendments (both formal and informal submittals) for consistency with Federal requirements. Provide comments or other response to the AD/SC by the close of the public comment period or, in the case of informal submittals, within 30 days of receipt.

(c) Review all draft Federal Register notices (both proposed and final rules) concerning preemption or supersession of State program provisions.

(d) Prepare all Part 732 notifications resulting from Federal statutory or regulatory changes, and review all other Part 732 notifications to insure consistency with respect to policy concerns.

(e) Ensure that State programs, approved State program amendments and Federal Register notices are entered into COALEX.

~~(f) Provide assistance and coordination to the AD/SC in resolving issues resulting from legal reviews of State program amendments by the Field Solicitor.~~

(3) Assistant Director, Field Operations (AD/FO).

(a) Evaluate Field Office recommendations pertaining to achievement of an approvable and responsive timetable for enactment in response to a Part 732 notification, and prepare for the Director any necessary decision memoranda and letters to the State regarding the course of action to be followed (e.g., imposition of grant conditions, initiation of 30 CFR Part 733 procedures, or other appropriate measures).

(b) Assist the FOD, as necessary, with the implementation of any Director's decision regarding the action to be taken to secure an approvable and responsive timetable for amendment enactment from a State.

(c) Review and process (through the AD/RRP to the DD/OTS) all Part 732 notifications resulting from oversight activities.

(4) Assistant Director, Support Center (AD/SC).

(a) Provide assistance, as needed, and consult with the FOD on the Field Office evaluation of State-submitted timetables for amendment enactment or changes to existing timetables.

(b) Evaluate all proposed State program amendments (both formal and informal submittals) for consistency with Federal requirements, ensuring that all necessary analytical and technical resources are provided to complete this review in a timely fashion. In concert with the Field Office Director, promptly conduct a preliminary review of the submittal 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 the guidelines for submission of State program amendments, the AD/SC may return the submittal through the FOD with a request that the State provide the omitted material.

~~(g) Coordinate any necessary legal reviews of amendment-related issues with the Field Solicitor. Promptly notify the AD/RRP of unresolved amendment-related issues resulting from the Field Solicitor's legal reviews.~~

(c) ~~(d)~~ In concert with the Field Office Director, coordinate consultation on formal submittals with the State Historic Preservation Officer (SHPO) or the Advisory Council on Historic Preservation (ACHP or the Council) when so requested by

the SHPO or the Council.

(d) ~~(e)~~ Review all draft proposed rules, Part 732 notifications and responses to proposed amendments (both formal and informal submittals) for accuracy and completeness and for consistency with respect to format and policy concerns.

(e) ~~(f)~~ Sign all proposed rules concerning State program amendments (except those pertaining to preemption and supersession of State program provisions).

(f) ~~(g)~~ 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/SC shall prepare the final rule and obtain the FOD'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.

(g) ~~(h)~~ Prepare, coordinate with the AD/RRP, and sign Part 732 notifications resulting from State notifications under 30 CFR 732.17(b).

(h) ~~(i)~~ Participate in meetings and otherwise communicate with the State as requested by the FOD or as deemed appropriate.

(i) ~~(j)~~ Monitor the status of formal and informal submittals and ensure that the amendment tracking and reporting system is maintained in an accurate and current fashion.

(5) <u>Field Office Director (FOD)</u>.

(a) In consultation with the AD/SC, evaluate and approve or disapprove proposed State timetables for amendment enactment or requests for changes to an existing State timetable for enactment.

(b) Implement any Director's decision regarding actions to be taken to secure an approvable and responsive timetable for amendment enactment from a State, monitor implementation progress and results, and provide any reports required by the AD/FO.

(c) Coordinate initial review procedures for proposed State program amendments (formal submittals) in the following manner:

1. Solicit comments from the AD/RRP, the Field Solicitors, the SHPO and appropriate Federal agencies (see Appendix 5).

2. Request and obtain EPA concurrence if the amendment concerns air or water quality standards or their applicability (see Appendix 8).

3. Prepare all proposed rules announcing receipt of a proposed amendment, reopening or extension of the public comment period, or other procedural action, as appropriate.

4. Schedule a public hearing on the proposed amendment and hold the hearing or meeting if one is requested.

5. At the discretion of the AD/SC, evaluate the proposed amendment jointly with the AD/SC to determine whether it is consistent with Federal requirements.

(d) In accordance with Directive INF-2, establish and maintain the administrative record file for each formally proposed amendment and provide appropriately numbered copies of all documents to the AD/SC and the State office maintaining the State copy of the administrative record.

(e) Surname or otherwise concur in all final rules concerning State program amendments.

(f) Meet and otherwise communicate with the State and other parties to discuss programmatic issues and amendments.

(g) Notify the State of Federal Register notice publication dates and provide the State with a copy of all proposed and final rules and other Federal Register notices concerning program submissions and amendments.

(h) As part of the oversight process, identify issues which require State program amendments for resolution and draft any resultant Part 732 notifications for AD/FO review and the Director's signature.

(i) Track all conditions of approval, required amendments and Part 732 notifications, and provide the State with reminder notices of due dates.

(j) Obtain a copy of each amendment as finally promulgated by the State following approval by OSM, compare with the version approved by OSM, and provide the AD/SC and the AD/RRP with a copy of both the promulgated amendment and the findings resulting from this comparison.

(k) Make every effort to receive copies of or obtain access to and review all official State registers or other periodicals containing new and revised laws, regulations or other program components in both proposed and final form.

(l) Make every effort to receive copies of or obtain access to and review all transcripts or minutes of meetings of the State rulemaking body.

(m) Assist the AD/RRP in the review of State program submissions and in evaluating State program amendment needs following revision of Federal statutes and regulations.

(n) Solicit comments from the AD/RRP and the Field Solicitor on ~~At the discretion of the AD/SC, evaluate~~ informal submittals of potential State program amendments ~~jointly~~ and assist ~~with~~ the AD/SC in the evaluation of these submittals.

(o) On an ongoing basis, access COALEX to determine if State program information is accurate and up-to-date.

(6) Branch of Environmental and Economic Analysis (BEEA).

(a) Coordinate and track the flow of Federal Register notices.

(b) Provide the Public Affairs Officer with a copy of all draft Federal Register notices for preparation of a news release or news release waiver prior to forwarding the notice package to the Office of the Federal Register.

(c) Communicate any concerns expressed by the Office of the Federal Register with respect to draft Federal Register notices to the signing official, and coordinate resolution of these concerns.

(7) Public Affairs Officer.

Prepare news releases and news release waivers concerning State programs and State program amendments as appropriate.

(8) Congressional Liaison Officer.

(a) Obtain and distribute information pertaining to Congressional actions affecting State programs.

(b) Notify the State Congressional delegation of the Secretary's actions concerning proposed State programs submitted under 30 CFR Part 731.

c. Procedures.

Procedures and related requirements for the processing of proposed State programs, State program amendments (both formal and informal submittals), Part 732 notifications, and timetables for enactment of State program amendments are located in

Appendixes 1, 2, 3 and 4 respectively.

d. Timeframes.

All timeframes within this directive, except as otherwise indicated, shall be calculated in accordance with 30 CFR 700.15, which requires the use of calendar days for prescribed time periods of seven or more days.

5. REPORTING REQUIREMENTS. None.

6. EFFECT ON OTHER DOCUMENTS.

Supersedes OSM Directive REG-5, "Review of State Regulatory Programs and Evaluation and Processing of Proposed State Programs and State Program Amendments," Transmittal Number 508, January 18, 1989, as modified by Transmittal Numbers 621 (June 29, 1990) and 675 (June 4, 1991).

7. REFERENCES.

a. "Federal Register Document Drafting Handbook," published by the Office of the Federal Register.

b. OSM Directive INF-2, "Administrative Records System," Transmittal Number 576, September 28, 1989.

c. OSM Directive REG-23, "Development and Implementation of Action Plans," Transmittal Number 436, April 15, 1988, as modified by the Transmittal Numbers 460 (July 19, 1988) and 572 (September 1, 1989).

d. "Guidelines for Contacts with Employees and Officials During Consideration of State Permanent Regulatory Programs," 44 FR 54444, September 19, 1979.

e. "Alternative Bonding Systems: An Analytical Approach and Identified Factors to Consider for Evaluating Alternative Bonding Systems," November, 1990.

8. EFFECTIVE DATE. Upon issuance.

9. CONTACT. Chief, Division of Regulatory Programs, (202) 208-2651.

10. KEYWORDS.

Amendment, State program, Part 732 notification, action plan, oversight, preemption, supersession.

11. LIST OF APPENDIXES.

Appendix 1	Processing of Proposed State Programs
Appendix 2	Processing of Proposed State Program Amendments
Appendix 3	Processing of Part 732 Notifications
Appendix 4	Processing of State Timetables for Amendment Enactment or Changes to an Existing Timetable for Enactment
Appendix 5	Standards for Comparison of State Regulatory Programs and Amendments with SMCRA and the Federal Regulations
Appendix 6	Considerations for Reviewing Alternative Bonding Systems
Appendix 7	Distribution List for State Program Submissions and State Program Amendments
Appendix 8	Environmental Protection Agency Concurrence Procedures

APPENDIX 2

Processing of Proposed State Program Amendments

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.

States shall also be encouraged to include the following items as part of any proposed formal or informal amendment package:

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

b. The entire section or subsection of the State rule, statute, policy statement or other program 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 corresponding Federal provisions, the rationale for the changes, any technical justification for the changes, and their legal effect;

e. Precise identification of existing language being deleted and 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. For each formal submittal, 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 existing State laws or regulations.

The AD/SC, in concert with the FOD, may return a submittal to the State if the State deviates from these guidelines in a manner that substantially hinders review. When such a determination is made, the FOD shall promptly (within five days of receipt) return the defective submittal to the State with a letter listing the specific reasons why it cannot be reviewed and requesting the State to provide the omitted material. If the State fails or

refuses to comply with this request, the AD/SC shall initiate review of the submittal in accordance with the appropriate portion of this appendix.

2. Processing of formal submittals.

a. General requirements and narrative description of procedures.

(1) Public comment solicitation.

The Federal regulations at 30 CFR 732.17(h)(1) specify that OSM shall publish a notice of receipt (proposed rule) in the Federal Register within 10 days following receipt of a formally proposed amendment. The notice shall establish a minimum public comment period of 30 days, although a 15-day public comment period may be provided where an amendment is analogous to changes in SMCRA or the Federal regulations, provided the full text of the amendment is published in the Federal Register.

(2) Agency comment solicitation.

The FOD shall forward a copy of the proposed amendment (and accompanying materials) to the AD/RRP, the Field Solicitor and other Federal agencies ~~and the AD/RRP~~ for review and comment. If the amendment affects air or water quality standards (effluent and emission limitations) or their applicability, the FOD shall request the concurrence of the Environmental Protection Agency (EPA). Appendixes 7 and 8 and Part 2.b. of this appendix provide addresses and further instructions concerning comment solicitation and concurrence procedures.

In addition, under 30 CFR 732.17(h)(4) a copy of the amendment must be provided to the SHPO and the ACHP for comment. In accordance with 36 CFR Part 800, no final rulemaking action on any submittal concerning historic or cultural resources shall be taken until a response is received or 60 days have elapsed, whichever occurs first. However, submittal review and processing shall not be otherwise delayed pending comment receipt. If the SHPO or the ACHP requests consultation on a proposed amendment, no final rule may be published until this consultation has occurred. OSM is not obligated to adopt the SHPO's or the Council's recommendations when it finds them to be inappropriate, but, if requested, it is required to consult with the SHPO or the Council on possible mitigation measures before taking final action.

(3) Submittal review.

The AD/RRP, AD/SC and FOD shall begin reviewing the submittal immediately following receipt. The AD/RRP and the FOD shall forward their comments to the AD/SC by the close of the comment period. Within 10 days of the close of the comment period, the AD/SC shall complete an analysis of the submittal and the comments received, and, if problems are identified, orally

contact the State through the FOD to determine whether it prefers to address these problems before or after publication of the final rule. As specified in 30 CFR 732.17(h)(7), to the extent possible, the AD/SC shall analyze all comments received and complete preparation of either a letter to the State (if problems are identified and the State wishes to correct them before publication of a final rule) or a final rule within 30 days following the close of the comment period.

The AD/SC is encouraged to formulate a review team, which should include one or more Field Office representatives and, as needed, members of technical and professional disciplines, to analyze the submittal and prepare the letter or final rule. The AD/SC archeologist/historian shall be a member of teams reviewing submittals that contain provisions concerning cultural and historic resources. All work of the team shall be supervised by the AD/SC through the team leader. As noted above, the FOD may provide other input for team consideration by submitting formal comments during the public comment period.

If the State provides additional material in response to OSM's concerns, a Federal Register notice reopening the comment period (normally for 15 days unless the new material is unusually voluminous or highly complex, in which case a longer period may be provided) shall be published. ~~and~~ Copies of the additional material shall be provided ~~circulated~~ to the agencies listed in Appendix 7 for review, the AD/RRP, the Field Solicitor and

In evaluating submittals to determine whether they are in accordance with Federal requirements, the following materials shall be considered:

a. SMCRA and the Federal regulations promulgated pursuant thereto.

b. Preambles to proposed, final and superseded Federal rules concerning the topic under consideration.

c. Explanations provided by the State.

d. OSM policy statements and directives.

e. Comments received from both internal and external reviewers.

f. Legal and technical reference materials.

g. Actions taken concerning similar proposed changes to other State programs.

h. Other relevant available information.

Further guidance concerning the standards of comparison and the proper terminology for use in correspondence and Federal Register notices can be found in Appendix 5. In addition, Appendix 6

provides guidance for reviewing alternative bonding systems or revisions thereto proposed under 30 CFR 800.11(e) and section 509(c) of SMCRA.

(4) Final rule.

The final rule announces the Director's decision on the proposed amendment and revises 30 CFR Chapter VII, Subchapter T to reflect this decision. It contains findings describing how and why the proposed amendment is or is not consistent with Federal requirements. In addition, it includes a summary of all comments received and an analytical discussion of their disposition.

Depending on the circumstances, the Director may decide to:

(a) Approve the amendment.

(b) Disapprove the amendment.

(c) Where the State's proposal is incomplete, i.e., where it fails to include all necessary elements or supporting documentation but does not actually conflict with the corresponding Federal requirement, approve the amendment, with any missing elements or other inconsistencies being made the subject of a required program amendment.

(d) Defer a decision if a judicial ruling on the corresponding Federal provision prevents approval of the amendment but the issue of concern is under appeal on behalf of the Secretary. A deferral has the same effect as a disapproval except that, if OSM later decides to approve the amendment on the basis of a favorable court decision, no resubmission by the State is necessary, nor is any reopening of the comment period required if the remanded Federal regulation is reinstated without change. Particularly controversial provisions of complex amendments may also be deferred to facilitate approval or disapproval of the remaining provisions. Deferrals should be avoided wherever possible (their use is optional, not mandatory, in the situations outlined above) because of the program implementation difficulties and indefinite tracking requirements they create.

(e) Take any combination of the above actions, as appropriate for each specific provision of the amendment.

(5) Effective date.

Final rules concerning State program amendments shall normally be made effective on the date the rule is published in the Federal Register. However, effective dates shall be adjusted to coordinate Federal actions with the State rulemaking process if so requested by the State.

Paragraph (g) of 30 CFR 732.17 specifies that no change to a State law, regulation or other program component shall take effect for State program purposes until approved by the Director. This includes organizational changes, even if intended to be nonsubstantive. States shall be encouraged to submit amendments in proposed form or otherwise ensure that the amendment will not be formally promulgated or become effective until approved by OSM.

Approval of an amendment is conditioned on the State's promulgation of the amendment in a form identical to that in which it was reviewed, except for correction of typographical errors. If the State otherwise modifies the proposed amendment in the promulgation process, the modified amendment must be processed in the same manner as a new proposed amendment, and the modifications will not become effective for State program purposes until approved by OSM. If the State fails to promulgate an amendment within a reasonable time following OSM approval, the FOD shall pursue resolution in accordance with Directive REG-23, "Development and Implementation of Action Plans." If this process fails, the FOD shall consult with the AD/FO to determine the appropriate action. If these resolution efforts fail, preemption or supersession of offending provisions under 30 CFR 730.11 or initiation of proceedings under 30 CFR Part 733 may be considered.

If the State promulgates or implements a proposed amendment prior to OSM approval, and if OSM subsequently disapproves the amendment or a portion thereof, it may be necessary to formally set aside the disapproved provisions by preempting or superseding them in accordance with the provisions and procedures of 30 CFR 730.11. However, preemption or supersession is not a routine or automatic occurrence. When a State implements or continues to implement disapproved provisions, the FOD shall consult with the AD/FO and the AD/RRP concerning the proper course of action.

b. Detailed procedures.

Note: If, within 30 days of OSM disapproval of a proposed amendment provision, the State submits a revised proposal to address the disapproval, the timeframes in Steps (1) - (10) below shall be shortened to enable the AD/SC to reach a decision on the submittal within 30 days of receipt in accordance with the provisions of 30 CFR 732.17(h)(8) and (9). The proposed rule shall provide a 15-day rather than a 30-day comment period. This note applies only to those provisions of the submittal that address the disapproval and then only if the State submits them within 30 days of the disapproval.

(1) Within five days of receipt of a formal submittal, the FOD shall:

(a) Establish (and subsequently maintain) the administrative record file in accordance with OSM Directive INF-2.

(b) Distribute one copy of the amendment to the agencies listed in Appendix 7 and solicit their comments. The time allowed for comment shall be no shorter than that provided for public comment. The letters sent to the SHPO and the ACHP shall include a sentence stating that, unless comments are received to the contrary, OSM will proceed as if a determination of no effect is in place with respect to the consultation requirements of 36 CFR Part 800.

(c) When the amendment concerns air or water quality standards or their applicability, request the concurrence of the EPA in accordance with Appendix 8.

(d) Prepare and forward to the AD/SC a draft proposed rule announcing receipt of the proposed amendment, following the general format guidelines of the "Federal Register Document Drafting Handbook" and the content requirements of 30 CFR 732.17(h)(2), (3) and (5).

(e) Forward one copy of the proposed amendment and accompanying materials to the AD/RRP and the Field Solicitor for review and comment.

(f) Forward one copy of the proposed amendment and accompanying materials to the AD/SC.

(g) Either in concert with or independent of the AD/SC, initiate a review of the amendment to determine its substantive adequacy, providing any comments to the AD/SC by the close of the public comment period.

(2) Promptly following receipt of a copy of the formal submittal from the FOD, the AD/SC shall initiate a review of the proposed amendment, either in concert with or independent of the FOD review. ~~If the AD/SC determines that the submittal involves matters requiring legal expertise, a concurrent legal review of these specific issues shall be requested from the Field Solicitor.~~ The AD/SC shall assure that all issues resulting from the review are promptly identified, elevated as necessary, and resolved in order that the submittal may be processed within the timeframes established in Step (9). ~~The AD/SC shall notify the AD/RRP promptly of unresolved issues resulting from the Field Solicitor's review and subsequent discussions. The AD/RRP shall provide the necessary assistance and coordination to the AD/SC and the Office of the Solicitor to resolve any outstanding issues in an expeditious manner.~~

(3) The AD/SC shall review and, as needed, correct the draft proposed rule prepared in Step (1)(d), and sign and forward it to BEEA for publication in the Federal Register. To the extent possible, this action shall be completed within a

The AD/SC shall give serious consideration to Field Solicitor comments, but the final determination as to whether a proposed State program amendment meets the standards for approval is primarily a policy matter, not a legal issue. Accordingly, this determination shall be made by the AD/SC.

timeframe that allows publication of the proposed rule within 10 days of receipt of the amendment. In establishing interim timeframes, the AD/SC shall take into consideration that the Office of Federal Register does not publish a document until three working days after receipt.

(4) BEEA shall provide a copy of the draft proposed rule to the Public Affairs Officer for preparation of a news release or news release waiver, upon receipt of which BEEA shall forward the notice to the Office of the Federal Register.

(5) Immediately upon publication of the proposed rule in the Federal Register, the FOD shall send one copy of the notice to the State regulatory authority.

(6) No sooner than five days before the close of the public comment period announced in the Federal Register (but no later than the close of the comment period), the FOD shall hold a public hearing if two or more persons request an opportunity to testify. If only one person submits such a request, a public meeting shall be held instead. No hearing or meeting need be held where no one requests an opportunity to testify. Hearings shall be conducted in accordance with the requirements of 30 CFR 732.17(h)(5). Verbatim transcripts of hearings and minutes or other summaries of meetings shall be kept and entered in the administrative record.

(7) If the SHPO or the ACHP requests consultation on any amendment provisions that may affect historic interests, the FOD shall immediately notify the AD/SC even if Step (9) has already been completed. The AD/SC, in concert with the FOD, shall then arrange any necessary meeting with the SHPO or the Council.

If no response is received by that date,

(8) The AD/RRP and the Field Solicitor shall review the amendment and provide comments or other appropriate response to the AD/SC by the close of the public comment period. The AD/SC ~~shall~~ need not delay action ~~pending receipt of comments from the AD/RRP.~~ however, a reasonable extension of the time allotted for review and comment should be granted upon request if the submittal is lengthy or complex.

(9) Within 10 days following the close of the public comment period, the AD/SC shall analyze all comments received, including those from the Field Solicitor, the FOD and the AD/RRP. ~~If this analysis or~~ either the evaluation initiated in Step (2) or the analysis of comments discloses any apparent deficiencies, the AD/SC, through the FOD, shall orally contact the State to determine whether the State prefers to address these deficiencies before or after publication of the final rule. The FOD shall document this response in a conversation record and enter it into the administrative record. Based on this response, the AD/SC shall then prepare, within 20 days of the close of the comment period, either a final rule or a letter to the State outlining the areas in which the amendment appears to be inconsistent with Federal requirements and the nature of these deficiencies. If the State does not indicate a preference or fails to respond immediately, the AD/SC shall proceed with

for review and comment for a period of not less than 10 days. After revising the rule to reflect those comments deemed appropriate, the AD/SC shall obtain the FOD's concurrence (surname) and

preparation of a final rule unless and until such time as the State indicates otherwise. If a letter is prepared, it shall provide the State an opportunity to meet with OSM to discuss the issues. It shall also request that the State submit any revised rules or other materials or rebuttals within 30 days of receipt.

(10) If a final rule is prepared in Step (9), the AD/SC shall ~~coordinate legal review of the rule with~~ provide a copy to the Field Solicitor and the FOD ~~shall surname or otherwise indicate his or her concurrence with the final rule. The AD/SC shall then~~ sign the rule unless it involves a condition of program approval, in which case the AD/SC, in lieu of signature, shall prepare a memorandum from the Director to the ~~Secretary recommending~~ requesting ~~Secretarial~~ signature, ~~and~~ forward the rule package to BEEA. In either case, the AD/SC shall Assistant Secretary for Land and Minerals Management

If a letter is prepared in Step (9), the AD/SC shall forward it to the FOD for signature and delivery to the State. The FOD shall furnish a copy of the signed letter to the AD/SC.

~~To the extent possible, the AD/SC and the FOD shall complete these actions within 30 days of the close of the last public comment period.~~

~~(11) If the proposed amendment concerns a condition of program approval, BEEA shall forward the final rule and accompanying documents through the Director to the Assistant Secretary for Land and Minerals Management (ASLMM) for signature.~~

(~~12~~ 11) BEEA shall provide the Public Affairs Officer with a copy of the draft final rule for preparation of a news release or news release waiver, upon receipt of which BEEA shall forward the notice to the Office of the Federal Register.

(~~13~~ 12) Immediately upon publication of the final rule, the FOD shall forward one copy to the State regulatory authority.

(~~14~~ 13) After publication of the final rule in the Federal Register, the FOD shall acquire a copy of the amendment as finally promulgated by the State and review it to confirm that, apart from the correction of typographical and similar errors, the regulations or other amendment provisions have been promulgated in a form identical to that in which they were approved. The FOD shall forward a summary of the review to the AD/SC and the AD/RRP.

If the promulgated regulations are identical to the approved regulations or differ from them only in the correction of typographical errors, the FOD shall forward one copy to the AD/RRP to update the COALEX file. The FOD shall also forward one copy to the AD/SC.

If the promulgated regulations differ from the approved version, apart from the correction of typographical and similar errors, the FOD shall process the modifications as a new proposed

amendment (formal submittal), repeating Steps (1)-(~~17~~ 16) of this section as necessary.

14 (~~15~~) The AD/RRP shall enter the amendment language and pertinent Federal Register notices into COALEX.

15 (~~16~~) The FOD shall track any required amendments imposed by OSM in the final rule and provide reminder notices of due dates to the State as needed.

16 (~~17~~) If the State submits additional arguments or materials in response to the letter sent in Step (10), the FOD, within five days of receipt, shall distribute them in accordance with Steps (1)(b) through (1)(f) of this section and prepare and forward to the AD/SC a draft proposed rule announcing receipt of the additional materials and reopening the comment period for 15 days. All parties shall then proceed as in Steps (1)(g) through (4) and (6) through (~~17~~ 16). Exceptions to this requirement for reopening the comment period shall be made only for State responses ~~which~~ that contain no new information or ~~which~~ that merely identify errors and omissions in OSM's initial analysis.

3. Processing of informal submittals.

a. Procedures.

Direct communication with all parties involved in each of the following steps is strongly encouraged. The purpose of the informal process is to resolve differences expeditiously prior to preparation of the formal submittal, thus expediting the review and processing of that submittal.

(1) Within five days of receipt of an informal submittal, the FOD shall forward one copy to ~~both~~ the Field Solicitor, the AD/RRP and the AD/SC and shall initiate a review to determine its consistency with Federal requirements. If this review is conducted independent of the AD/SC, the FOD shall submit all review comments to the AD/SC within 30 days of receipt of the submittal.

(2) Upon receipt of the informal submittal from the FOD, the AD/SC shall review it for consistency with Federal requirements, preferably through the team approach discussed in Part 2.a.(3) of this appendix. ~~The AD/SC shall also coordinate any desired legal reviews with the Field Solicitor. The AD/SC shall notify promptly the AD/RRP of unresolved issues resulting from the Field Solicitor's amendment-related review and subsequent discussions.~~

(3) The AD/RRP shall review the submittal for policy concerns and, within 30 days of receipt, provide comments to the AD/SC. ~~When the AD/SC notifies the AD/RRP of unresolved issues resulting from the review by the Field Solicitor and subsequent discussions, the AD/RRP shall provide the necessary assistance~~

~~and coordination to the AD/SC and the Office of the Solicitor to resolve these issues in an expeditious manner.~~

(4) Within 60 days of receipt of the submittal, the AD/SC shall prepare a letter detailing the results of the OSM review and shall forward this letter to the FOD for signature and delivery to the State.

(5) The FOD shall promptly furnish a copy of the letter signed in Step (4) to the AD/SC.

b. Evaluation guidelines.

In evaluating submittals to determine whether they are in accordance with Federal requirements, the following materials shall be considered:

(1) SMCRA and the Federal regulations promulgated pursuant thereto.

(2) Preambles to proposed, final and superseded Federal rules concerning the topic under consideration.

(3) Explanations provided by the State.

(4) OSM policy statements and directives.

(5) Comments received from both internal and external reviewers.

(6) Legal and technical reference materials.

(7) Actions taken concerning similar proposed changes to other State programs.

(8) Other relevant available information.

Further guidance concerning the standards of comparison and the proper terminology for use in correspondence and Federal Register notices can be found in Appendix 5. In addition, Appendix 6 provides guidance for reviewing alternative bonding systems or revisions thereto proposed under 30 CFR 800.11(e) and section 509(c) of SMCRA.