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U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT

DIRECTIVES SYSTEM

Subject Number: REG-10 4
Transmittal Number: 182
Date: 7/6/83

Subject: OSM RULEMAKING POLICY AND PROCEDURES DIRECTIVE

Approval: [signature] Title: DIRECTOR

1. Purpose. This directive provides policy guidelines and procedures for the development, promulgation and review of rules. The purpose of the guidance and procedures is to assure that:

a. The need for and purpose of rules are clearly established and alternatives are considered and analyzed before rules are issued,

b. OSM management exercises effective oversight of the development, promulgation and review of rules,

c. The public is offered early opportunity to participate in the development and review of agency rules, when public participation is appropriate,

d. OSM has an orderly process for developing, promulgating, reviewing and amending rules, and

e. Rules are periodically reviewed for necessity, currency, and clarity.

2. Definitions.

a. Rule means an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of an agency. In this directive, the words "rule" and "regulation" have the same meaning and refer to new rules and regulations as well as amendments to existing rules and regulations. The word "rule" does not include:

(1) Administrative adjudications governed by the provisions of sections 556 and 557 of Title 5 of the United States Code; e.g., actions for which hearings are required to be conducted and the agency must preside or participate at the reception of the evidence and make a record of all findings and conclusions,

(2) Regulations issued with respect to a military or foreign affairs function of the United States, or

(3) Regulations related to agency management or personnel.

b. Legislative rules are rules issued to implement Federal law. Legislative rules generally have a direct effect on the public. Any rules which impose requirements or obligations on the public are generally legislative rules. Legislative rules have the force of law and are binding on all parties, including Federal and State agencies and the public, if properly promulgated. Legislative rules issued by OSM are published in the Federal Register and codified in Title 30 of Chapter VII of the Code of Federal Regulations.

c. Interpretive rules are rules issued to advise the public on how a provision in a statute or regulation which OSM administers will be generally interpreted or under specific conditions which are likely to occur in more than a few cases. They explain OSM's views on what a regulation or statute means. Interpretive rules have a direct effect on the public but do not establish new legal requirements or obligations on the public. Interpretive rules are published in the Federal Register. They will usually be codified, for reference, in section 200 of the applicable Part in 30 CFR Chapter VII.

d. General statements of policy are rules issued to advise the public on how OSM intends to implement or administer a discretionary authority. General statements of policy (as used in this directive) may have a direct effect on the public but, like interpretive rules, do not establish new legal requirements or obligations on the public. While subject to change at the discretion of the Director, statements of policy provide general guidance on how OSM employees will apply pertinent laws and regulations to specific situations. General statements of policy are published in the Federal Register but will not normally be codified in the Code of Federal Regulations.

e. Statements of agency organization, procedures and practice are rules covering the operations of OSM which generally have no effect or only indirect effects on the public. Such statements may be promulgated through the OSM directives system (See Directive No. OPM-1, "Policy Guidelines for Issuance and Maintenance of Directives," dated October 2, 1981), but must be published in the Federal Register in final form. While OSM employees must adhere to directives in discharging their duties and responsibilities, directives cannot be used to impose requirements or obligations on the public.

f. Technical memoranda or reference publications are documents prepared by OSM to assist the public in complying with or understanding statutory or regulatory requirements but which are not published as rules through rulemaking procedures. They cannot be relied on or cited as legal authority or sanction for any action associated with official OSM programs. Technical memoranda or reference publications may be published in the Federal Register. They are generally available on request from OSM, either free or at a nominal cost, depending on the number of copies required and production costs of the publication.

g. Federal Register document is a general term that includes any notice of intent, proposed or final rule or regulation, announcement of public meetings and/or hearings or other documents published by OSM in the Federal Register.

h. Major rule means any rule that:

(1) Is likely to result in an annual gross effect on the economy of $100 million or more (where gross is defined as either the total costs or total benefits),

(2) Is likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions,

(3) Is likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets,

(4) Is determined to be major by the Secretary, the Under Secretary or the Assistant Secretary for Energy and Minerals, or

(5) Is designated major by the Director, Office of Management and Budget (OMB).

A regulatory impact analysis will be prepared for all major rules. The term "major rule" and the requirement for a regulatory impact analysis are established in Executive Order 12291, "Federal Regulation," February 17, 1981 (Chapter 2, OSM Federal Register Handbook).

i. Non-major rule means any rule not classified as major according to the criteria in paragraph 2h of this directive.

j. Determination of effects is the document prepared to report the findings of the economic analysis to determine:

(1) Whether a rulemaking action is major under the criteria in paragraph 2h above, and

(2) Whether the rule is likely to have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, as further defined in paragraphs 2m and n below.

k. Regulatory impact analysis (RIA) is the document prepared to report the findings of the economic analysis conducted for all major rules which considers:

(1) The potential benefits of the rule,

(2) The potential costs of the rule,

(3) The potential net benefits of the rule,

(4) Any reasonable alternative approaches that could substantially achieve the same regulatory goal at a lower cost, and

(5) Any legal reasons why the rule cannot be based on any of the preceding requirements.

The regulatory impact analysis is developed in two stages. A preliminary regulatory impact analysis is developed and made available for public review and comment at the same time the proposed rule is published. A final regulatory impact analysis is developed and made available to the public at the time the final rule is published.

l. Small entity flexibility analysis (SEFA) means the analysis conducted when a rule will have a significant effect on a substantial number of small entities. The SEFA is developed in two stages. A initial SEFA is developed and made available for public review and comment at the same time the proposed rule is published. A final SEFA is developed and made available to the public at the time the final rule is published. In general, when determining whether the rule will have a significant economic effect on a substantial number of small entities, OSM may consider the following typical effects:

(1) Demographic effects (firms affected per industry, industries affected, anticipated closings, geographic distribution),

(2) Direct costs by size of affected entities, both total and per unit of output,

(3) Indirect costs,

(4) Non-quantifiable effects,

(5) Enforcement costs (Federal, State, and local),

(6) Competitive effects, and

(7) Aggregate effects (employment, output, price levels, growth rates).

m. Small entity means any business which is independently owned and operated and which is not dominant in its field of operation, including any coal operator whose annual production of coal from surface and underground mining operations does not exceed 100 thousand tons; any non-profit enterprise which is independently owned and operated and is not dominant in its field; or governments of cities, counties, towns, townships, villages, or school districts, with a population of less than 50 thousand.

n. Significant economic effect includes a wide variety of quantifiable and non-quantifiable aspects. For example, every small entity does not have to be affected significantly for the total effect to be significant. Costs which are not easily quantifiable and the marginal effects must be considered. The cumulative effects should also be evaluated to the extent practicable.

o. Substantial number means a substantial number of entities within one, or a combination of the three subgroups: small businesses, small organizations, or small governmental jurisdictions. Whether a substantial number are affected must be determined under the circumstances of each rule, but it is not necessary for an overwhelming percentage of potential entities in a subgroup, or combination of subgroups, to be affected for the rule under development to meet the "substantial number" test. In addition, though a rule may not affect a substantial number of small entities overall, it may affect a substantial number within an industry or sector. Such a rule will, therefore, affect a substantial number of small entities.

p. OMB exemption means a written statement from the Office of Management and Budget (OMB) which exempts a rule or a class of rules from the requirements of specific sections of Executive Order 12291. The OMB exemption does not apply to the requirements to determine the effect on small entities or to conduct a SEFA under the Regulatory Flexibility Act. Under OMB exemptions OSM is not required to determine whether the regulatory effects are major, prepare determinations of effect or regulatory impact analyses, or to provide OMB the opportunity to review the following classes of rules:

(1) Approval or conditional approval of State regulatory programs, actions or amendments, and

(2) Approval of State reclamation plans or amendments.

q. Executive Order exemption means any rule or class of rules that meet the following criteria:

(1) Any rule that responds to an emergency situation. Any such rule must be reported to OMB by a Secretarial Officer as soon as is practicable and OSM must include in the preamble to the rule a statement of the reasons why it is impracticable to follow the procedures of Executive Order 12291. If the rule is a major rule, OSM must prepare and transmit to OMB, as soon as is practicable, a regulatory impact analysis of the rule.

(2) Any rule for which consideration or reconsideration under the terms of the Executive Order would conflict with deadlines imposed by statute or by judicial order. Any such regulation must be reported to OMB by a Secretarial Officer, together with a brief explanation of the conflict, and OSM must include in the preamble to the rule a statement of the reasons why it is impracticable to follow the procedures of the

Executive Order. In consultation with OMB, OSM must provide OMB with the opportunity to review the rule and the regulatory impact analysis, if appropriate, to the extent permitted by statutory or judicial deadlines.

r. Lead official means the OSM person responsible for initiation and development of a rulemaking action or rule review.

s. Incorporation by reference refers to published information which is incorporated into a regulation by identifying, but not reprinting, the information within the body of the regulation. Information incorporated by reference has the same applicability and effect as a rule, as defined in paragraph 2a of this directive. (Incorporation by reference is not to be confused with cross-reference. Cross-reference means ordinary references to information that do not incorporate outside matter within a rule and do not have the same applicability and effect as a rule.) (See Chapter 7 of the OSM Federal Register Handbook.)

t. Semiannual agenda means a list published in the Federal Register by the Department of the Interior each April and October that shows rules scheduled for development or rule review during the ensuing six months. The agenda also identifies whether the rule is major or non-major and includes rules previously listed on the agenda but not yet promulgated.

u. Rule review means OSM's review of existing rules to determine if the rules are needed, up-to-date and clear, in accordance with the requirements of Executive Order 12291 and the Regulatory Flexibility Act. OSM's rules will be reviewed at 5-year intervals. If a rule review results in the need to rescind or revise a rule, the procedures for development of rules (paragraph 3e of this directive) will be used, as appropriate.

v. Review criteria means the standards used to conduct the review of rules and develop conclusions and recommendations. (See paragraph 3d of this directive.)

w. Review cycle means the 5-year period during which a rule must be reviewed.

x. Review document means the document which presents the results of the rule review and contains the analysis and supporting information concerning the review of a rule.

y. Information collection clearance package means the SF-83 and supporting statements for each Part of the rule being published. This package contains justification for the information collection requirements contained in the rule. It is submitted to OMB for approval, in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). (See OSM Directive REG-6, dated 10/07/81.)

3. Policy and Procedures

a. Origins of Rulemaking. The following are types of actions by Federal or State authorities or the general public that may generate the need for rulemaking:

(1) New or amended Federal legislation (including amendments to SMCRA),

(2) New or amended regulations of other Federal agencies,

(3) Submission of new State programs, amendments to State programs, or enactment of new State statutes or regulations which affect Federal programs,

(4) Decisions by the Federal court,

(5) Decisions by the Office of Hearings and Appeals,

(5) Petitions filed under 30 CFR 700.12,

(6) OSM review of rules.

b. Responsibilities

(1) In accordance with 318 DM 2-10, the Assistant Secretary for ~~Energy and~~ Land and Minerals Management will sign all:

(a) Rules,

(b) Determinations of effect,

(c) Regulatory impact analyses, and

(d) Small entity flexibility analyses.

(2) The Director having overall responsibility for the policy, procedures and activities associated with rulemaking activities will:

(a) Sign determinations of effect,

(b) Sign rulemaking documents relative to State program amendments, abandoned mine land plans, and

(c) Sign Federal Register notices, including those related to State program actions, except as delegated to Assistant Directors as specified in paragraph 3.b.(5)(k) below,

(d) Grant or deny public petitions for rulemaking under 30 CFR 700.12, and

(d) Establish the rule review schedule.

(3) The Deputy Director reviews Federal Register documents and may act for the Director under the delegation of authority in Directive No. OPM-5, "Delegations of Authority," dated December 2, 1981.

(4) The Public Affairs Officer will develop, secure approval, and issue advertisements or press releases that may be required in the course of rulemaking.

(5) The Assistant Directors, in their respective program areas, will:

(a) Designate the lead official,

(b) Monitor and review all rulemaking actions,

(c) Provide ~~RIM~~ PPIm with information for the semiannual agenda,

(d) Review Federal Register documents,

(e) Sign determinations of effect,

(f) Sign memoranda to the Director which propose rulemaking,

(g) Conduct rule reviews,

(h) Assure that the rules are reviewed and ready for surnaming by the Associate Solicitor, Division of Surface Mining,

(i) Resolve policy issues raised during development of proposed and final rules or refer the issues to the Deputy Director or Director for resolution,

(j) Assure that other Assistant Directors, other Federal agencies, and other Bureaus within Interior participate in the development and review of rules, when applicable,

(k) Sign Federal Register notices of a routine, procedural nature that do not initiate, modify, or conclude policy actions, such as notices of correction to already published notices, extensions of comment periods, etc.

(l) Assure that public participation activities are conducted, when appropriate, and represent OSM management at public meetings or hearings or delegate another management official to serve in that role.

(6) The Assistant Director, Technical Services and Research will:

(a) Conduct economic analyses for inclusion in determinations of effect, regulatory impact analyses, and small entity flexibility analyses and, in consultation with the responsible program Assistant Director and lead official, prepare the documents for compliance with Executive Order 12291 and the Regulatory Flexibility Act. In consultation with the ~~Regulatory~~ Program Planning and Issues Management ~~Office~~ (~~RIM~~ PPIM), will provide assistance in coordinating technical issues with the Department and OMB.

(b) Conduct NEPA compliance activities in accordance with Directive No. REG-1, "Handbook on Procedures for Implementing NEPA," dated December 30, 1981, and amended May 5, 1981. Coordinate all NEPA compliance activities with the Department's Office of Environmental Project Review, Council on Environmental Quality, and Environmental Protection Agency.

(7) The Assistant Director, Budget and Administration will:

(a) Coordinate the requests for approval of information collection and recordkeeping requirements established by rules with the Department's Division of Directives and Regulatory Management and OMB. (See OSM Directive REG-6, "Information Collection Request," dated October 7, 1981.)

(b) Acquire and assist in the distribution of Federal Register documents.

(c) Oversee operation of the Administrative Record.

(8) The Chief, ~~Regulatory~~ Program Planning and Issues Management ~~Office~~ will:

(a) Serve as the focal point for control and monitoring of rulemaking activities,

(b) Coordinate rulemaking documents, including determinations of effect, regulatory impact analyses, and small entity flexibility analyses with the Associate Solicitor, Division of Surface Mining; Department's Division of Directives and Regulatory Management; Office of the Federal Register and OMB,

(c) Develop the semiannual agenda,

(d) Develop and monitor the rulemaking and rule review schedules,

(e) Serve in an advisory capacity to management and staff on procedures for the development and review of rules and the supporting analyses, including such concerns as requirements of the Office of the Federal Register, Department's Division of Directives and Regulatory Management, Office of Management and Budget, etc.

(f) Distribute Federal Register documents when applicable,

(g) Assure that all Federal Register documents meet the requirements of the Office of the Federal Register,

(h) Coordinate all proposed or revised incorporations by reference with the Office of the Federal Register, and

(i) Establish and monitor a system for assuring that information incorporated by reference is kept current and relied upon by the agency in the conduct of its programs.

(9) The lead official will:

(a) Prepare the memorandum recommending that a rule be developed (paragraph 3c of this directive),

(b) Draft and circulate for review and comment, where appropriate, working drafts of rules,

(c) Coordinate the development of working drafts of rules with the Associate Solicitor, Division of Surface Mining,

(d) Assure that the Federal Register surnaming package is assembled and contains, as appropriate, the news release, signed determination of effects, regulatory impact analysis, small entity flexibility analysis, NEPA compliance document, and any other required supporting documents (Chapter 2 of OSM Federal Register Handbook),

(e) Provide information to and participate with, the Assistant Director, Technical Services and Research, in the preparation of the determination of effect, regulatory impact analysis, small entity flexibility analysis, and NEPA compliance documents,

(f) In cooperation with the ~~RIM~~ PPIM office, ensure that all official rulemaking documents, including technical references, are properly filed with the Administrative Record after the Federal Register documents are published,

(g) Make arrangements for public participation in the development and review of rules,

(h) Conduct the analysis of the rules assigned to him/her for rule review,

(i) Secure necessary clearances and ensure that official rule review documents are properly filed with the Administrative Record,

(j) In consultation with the RIM office, initiate action to have new documents incorporated by reference (Chapter 7 of OSM Federal Register Handbook), and

(k) Provide information to and participate with the Assistant Director, Budget and Administration in obtaining approval of information collection and recordkeeping requirements.

c. Procedures.

(1) Overview. Normally, all rulemaking actions in OSM will begin with a formal proposal to, or request from, the Director and follow a common procedure which culminates in the issuance of a final rule. The following is a step-by-step description (as illustrated in Figure 1) of the process required for the development and coordination of rules and amendments. The steps shown are depicted and discussed in their normal sequence, but this may be condensed in the interest of time.

(2) Proposal to Initiate Rulemaking. This step should be used in developing legislative or interpretive rules or general statements of policy, except for those in 30 CFR Chapter VII, Subchapter T.

(a) The responsible Assistant Director will prepare a memorandum that will:

1 Outline the purpose of the rule,

2 Identify the issues to be considered in the rulemaking,

3 Identify the reasonable alternatives that will be considered,

4 Establish a tentative schedule for preparing and finalizing the rule,

5 Identify the information needed for the semi-annual agenda, and

6 Provide any other pertinent background information, such as what generated the need for the rule.

(b) The memorandum from the Assistant Director must be routed through the Associate Solicitor for surnaming and forwarded to the Director for approval or disapproval.

(c) A copy of any memorandum indicating approval will be sent by the lead official to:

1 The Administrative Record where a file will be established to document the decision and all subsequent related actions,

2 The Assistant Director, Technical Service and Research for use in developing the determination of effect; regulatory impact analysis or small entity flexibility analysis, if required, and NEPA compliance document, and

3 Chief, ~~RIM~~ PPIM office for including rules in the semiannual agenda and rule monitoring system.

(3) Semiannual Agenda. This step should be used when developing legislative and interpretive rules. The Chief, ~~RIM~~ PPTM office will submit information to the Department's Division of Directives and Regulatory Management to place rules on the semiannual agenda.

(4) Determination of Effect. This step should be used when developing legislative and interpretive rules and general statements of policy.

(a) The determination of effect (DE) will normally be prepared as early in the rulemaking process as possible. In some cases it may be necessary to delay preparation until after comments are received on a notice of intent to propose rules. Except in extraordinary situations, the DE should be approved by the Assistant Secretary for ~~Energy~~ Land and Minerals mgt. before the proposed rule is drafted. Completion of the DE early in the process is important in order to assure consideration of all reasonable alternatives.

(b) The Assistant Director, Technical Services and Research, will prepare the DE which will:

1 Address each of the three criteria concerning economic effects specified in paragraph 2h, above.

2 Address the seven criteria specified in paragraph 21 above.

3 Document the results of these determinations (sample format included in OSM Federal Register Handbook, Chapter 2) for approval by the appropriate program Assistant Director, the Director, and the Assistant Secretary for ~~Energy~~ Land and Minerals management.

(c) The lead official will:

1 Assure that the issues and alternatives are properly defined and described in the DE, and

2 Inform the Assistant Director, Technical Services and Research of all relevant changes during the rule development process for consideration in the DE.

(d) Once the DE has been signed by the Assistant Secretary, the Chief, ~~RIM~~ PPTM office will coordinate the distribution to and review of approved DE's with the:

1 Department's Division of Directives and Regulatory Management,

2 Department's Office of Policy Analysis (which has up to 15 days to review and approve the DE before a rule is submitted to the Office of Management and Budget),

3 Small Business Administration,

4 Department's Office for Small and Disadvantaged Business Utilization, and

5 Associate Solicitor, General Law Division.

(e) ~~The purpose of preparing a DE is to determine:~~ See Appendix A of this Directive for the purpose and scope of the DE.

1 Whether the rule is major in accordance with the criteria in paragraph 2h above and requires the preparation of a regulatory impact analysis,

2 To help identify the important economic and budgetary effects, consequences of significant alternatives (both regulatory and non-regulatory) and to ascertain whether additional information is needed,

3 To assist in choosing the alternative which best fulfills the requirements of section 2 of E.O. 12291 which establishes that:

a Administrative decisions shall be based on adequate information concerning the need for and consequences of the proposed action,

b Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society,

c Regulatory objectives shall be chosen to maximize the net benefits to society,

d Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen, and

e OSM regulatory priorities are set with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

4 To assist in choosing the alternative which best fulfills the requirements of OSM's statutory mandates, and

5 To determine whether the rule will have a significant economic effect on a substantial number of small entities in accordance with paragraphs 2l and 3c(4)(h) below.

(f) The scope of the DE must be broad enough to encompass all reasonable alternative formulations of the proposed rule. When significant differences in the types and magnitude of the effects are possible, a range of estimates should be made for those alternatives given. The scope of the rule may be measured by such factors as the number of organizations, entities or individuals affected; estimated cost of compliance per affected party; estimated total cost of compliance and administration; and size of geographic region affected.

1 In many situations a "worst case" analysis, showing the expected effects of the most burdensome alternative, will be sufficient to show that the rule is not major. In situations where a "worst case" analysis is not possible or the results are ambiguous, the scope of the DE depends on such factors as the scope of the rule under consideration; the amount of public interest or controversy surrounding the rule under consideration; whether the action concerns a new rule or changes to an existing rule; and whether the rulemaking action is likely to result in an increase or decrease of regulatory burden.

2 Significant new data collection should not be required to develop the DE. Existing OSM data, or data readily available from State and local governments, other Federal agencies, or the private sector, should be sufficient. When sufficient data are not available, OSM may ask for comments from the public on the possible effects of a rule by issuing a notice of intent to propose rules.

3 Every effort is to be made to identify and describe possible direct effects of a rule, including individuals or entities affected, types of resources, methods of compliance, budgetary requirements, and type and magnitude of activity likely to be affected by the rule. These effects are to be quantified by providing numbers of affected individuals or parties, value of resources, costs of compliance, and so on. Ranges of estimates, upper and lower bounds, case study examples, and historical trends may be used, as appropriate, to quantify effects. In all cases any assumptions made are to be clearly stated.

(g) The DE is to be based on estimates of various possible regulatory and non-regulatory alternatives. Statutory mandates or other requirements to issue or revise rules does not remove the requirement to consider alternatives. Regulatory alternatives such as different rates of activity must be examined. The alternatives considered in the DE should be similar to those considered in any NEPA compliance document. When several variations are being considered, grouping types of variations into logical alternatives should be considered. If one or more alternatives may meet one or more of the criteria in paragraph 2h, OSM should consider determining that the rule is major. All reasonable alternatives should be considered when assessing the possible effects of the rule.

(h) When making a judgment on the interpretation of the criteria in paragraph 2h, the critical decision is the nature of the comparisions to be made; that is, "effect" and "major increase" compared to what. That decision depends on the size and scope of the rule as discussed above. In deciding how to make the comparisons, one or more of the following approaches may be considered:

1 Examine the difference between effects of possible alternatives and the absence of any rule,

2 Examine the difference between effects of possible alternatives and effects of the existing rule (for changes to rules),

3 Examine the difference between effects of non-discretionary statutory requirements and effects of possible alternatives which may interpret the statute,

4 Examine particular sectors of the economy, geographic regions, levels of government, or other groups that may be disproportionately affected,

5 Examine the estimated percentage increase in costs or prices, or

6 Examine the estimated absolute increase in costs or prices.

In all cases, the text of the DE must demonstrate a reasonable effort to examine anticipated effects and must show that the conclusions reached are based on reasonable assumptions and interpretations of the criteria.

(i) The preliminary analysis of economic effect on small entities shall be included with the DE. If an OMB exemption from Executive Order 12291 has been given for a rule or a class of rules (see paragraph 2p), a separate analysis of economic effect on small entities must still be prepared for the rules in that class since there is no provision for exemption from the Regulatory Flexibility Act. The analysis should consider whether the rule will have a significant effect on a substantial number of small entities (See definitions in paragraph 2 m, n and o.)

(5) Regulatory Impact Analysis. This step is to be used when developing major rules. A preliminary and a final regulatory impact analysis (RIA) must be prepared for each proposed and final major rule.

(a) The Assistant Director Technical Services and Research will prepare the RIA. The RIA should be conducted in order to evaluate whether

1 There is adequate information concerning the need for and consequences of the proposed action,

2 The potential benefits to society of the proposed action are greater than the potential costs, and

3 Within any legal constraints, all alternatives examined to obtain the given objective, will maximize net benefits to society.

(b) The elements of an RIA are contained in Chapter 2 of the OSM Federal Register Handbook.

(c) The lead official will:

1 Assure that the issues and alternatives are properly defined and described, and

2 Inform the Assistant Director, Technical Services and Research of all new relevant changes during the rule development process.

(d) The preliminary and final RIA's must be approved by the Assistant Secretary for ~~Energy~~ Land and Minerals, not the Secretary. Prior to submission to the Office of Management and Budget with the proposed or final rule, the RIA's must be coordinated with the Assistant Secretary for Policy, Budget and Administration.

(6) Small entity flexibility analysis. A preliminary and final small entity flexibility analysis (SEFA) must be prepared for each proposed and final rule that will have a significant economic effect on a substantial number of small entities.

(a) The analysis should show that adequate consideration has been given to alternative means of obtaining regulatory objectives which minimize the regulatory burden on small entities.

(b) The elements of a SEFA are contained in Chapter 2 of the OSM Federal Register Handbook.

(c) The lead official will:

1 Assure that the issues and alternatives are properly defined and described, and

2 Inform the Assistant Director, Technical Services and Research of all new relevant changes during the rule development process.

(d) The final SEFA's must be approved by the Assistant Secretary for Energy and Minerals or the Secretary. In addition, initial and final SEFA's must be coordinated with the Assistant Secretary-Policy, Budget and Administration before transmittal with the proposed or final rule to the Office of Management and Budget.

(7) Combination Analyses. When a rule is both major and is likely to have a significant economic effect on a substantial number of small entities, the RIA and the SEFA may be combined. When this is done, the document must clearly state that the two analyses are combined. In addition, the document must meet all of requirements specified in Chapter 2 of the OSM Federal Register Handbook.

(8) NEPA Compliance. This step is used when developing rules that have not been determined to be categorically exempt from the requirements of section 102(2)(C) of the National Environmental Policy Act.

(a) The lead official will consult with the Assistant Director, Technical Services and Research, to determine whether the proposed rulemaking action is categorically exempt or whether an environmental assessment (EA) should be prepared. The consultation will ordinarily take place before the memorandum in paragraph 3c(2) is prepared.

(b) The Assistant Director, Technical Services and Research, will prepare the environmental assessment, if required, and the finding of no significant impact, if applicable. If the assessment results in a finding of significant environmental impact, the Assistant Director, Technical Services and Research, will prepare the draft and final environmental impact statement (EIS).

(c) The lead official will:

1 Assure that the issues and alternatives are properly defined and described in the EA and EIS, if prepared, and

2 Inform the Assistant Director, Technical Services and Research of all relevant changes during the rule development process.

(d) The NEPA compliance documents will be prepared in accordance with the policies and procedures contained in 516 DM; OSM's NEPA compliance handbook, "Procedures for Implementing the National Environmental Policy Act," January 1, 1981; and OSM Directive No. INF-6, "Handbook on Editing and Publishing Environmental Impact Statements," December 5, 1980.

(9) Information collection clearance package

(a) If the rule contains recordkeeping and reporting requirements, the lead official will:

1 Provide the Information Resource Management Staff (IRMS) with a technical justification as to why the information is required. Guidelines are included in 305 DM 1. (See OSM Directive REG-6, "Information Collection Request," dated October 7, 1981.)

2 Provide the IRMS with an estimate of the number of burden hours required to comply with the requirement.

(b) The responsible Assistant Director will approve the package by signing the Standard Form 83.

(10) Notice of Intent to Propose Rulemaking. This step is optional and normally would be used when developing legislative rules.

(a) A notice of intent would be published in the Federal Register if it is determined that an early opportunity for public comment would provide information of assistance in developing a rule, DE, RIA, or SEFA. The notice of intent must state:

1 The need for the anticipated rulemaking,

2 The subject matter,

3 The key issues to be considered,

4 Where the public can obtain additional information, and

5 Where comments should be sent.

(b) When a notice of intent is to be published, public participation may include conferences or public meetings and may be generated by sending press releases to newspapers, directly notifying interested parties or publishing advertisements likely to be read by those affected.

(c) The notice of intent may be used to invite comments on the economic consequences of alternative regulatory approaches for use in preparing the determination of effect, draft regulatory impact analysis or initial small entity flexibility analysis. The notice may also invite comments on potential environmental impacts for usage in developing the NEPA compliance document. If an EIS is prepared on the rulemaking activity, the notice of intent to prepare rulemaking can be combined with the notice of intent to prepare an EIS.

(d) The ~~RIM~~ PPIm office will coordinate the review/approval process, after the notice is surnamed by the lead official and program Assistant Director. This process includes:

1 Review/surnaming by the Associate Solicitor, Division of Surface Mining,

2 Review/surnaming by the Deputy Director and Director,

3 Sending the signed notice to the Office of the Federal Register and scheduling publication date and

4 Sending a copy of the notice to the Administrative Record.

(11) Proposed Rule. This step is to be used when developing legislative rules.

(a) The lead official will:

1 Develop the preamble and proposed rule and obtain early review and comment on drafts of the proposed rule (see Chapter 1 OSM Federal Register Handbook),

2 Assure that the rule is written in clear English and can be understood by those who are to comply with it,

3 Assure that the information collection and recordkeeping requirements imposed by the new rule, in coordination with the Assistant Director, Budget and Administration, are developed for clearance by OMB, and submit to OMB no later than the day on which the notice of Proposed Rulemaking is published in the Federal Register;

4 Assure that the determination of effects and, as appropriate, the news release, NEPA compliance document, regulatory impact analysis, and small entity flexibility analysis are prepared,

5 Assemble the surname package (Chapter 4 in OSM Federal Register Handbook), and

6 Forward the surname package to Chief, RIM office after the rule is surnamed by the lead official and program Assistant Director.

7 Schedule public hearings

(b) The Chief, ~~RIM~~ PPIm office will:

1 Manage the rule surname package through the remainder of the OSM surname/signature process and the Departmental surname/signature process.

2 Coordinate clearance of the rule with the Department's Division of Directives and Regulatory Management, PBA. The Division of Directives and Regulatory Management has 7 days to review the rule before it can go to OMB.

3 Transmit the rule to OMB. OMB has up to 60 days to review proposed major rules, 30 days for final major rules, and 10 days to review proposed and final non-major rules before they go to the Federal Register, and may extend the review periods.

4 Coordinate any meetings with OMB concerning the rule.

5 File the rule with the Office of the Federal Register for publication. A minimum 60-day comment period for major rules and a 30-day comment period for non-major rules is recommended unless a shorter period is appropriate. A shorter period should be used only in special cases requiring more timely action, and in such a case, the preamble to the proposed rule will contain a statement of the reasons for the shorter period.

(c) The preamble to the rule must (Chapter 1, OSM Federal Register Handbook):

1 Discuss the alternative approaches considered,

2 Explain the basis for selection of the least burdensome alternative incorporated in the proposal,

3 Identify the NEPA compliance document being prepared where it can be obtained, and where comments on the analysis should be sent,

4 Indicate the results of the determination of effects,

5 Identify if an initial small entity flexibility analysis or a draft regulatory impact analysis has been prepared, summarize the analysis and identify how copies may be obtained and where comments on the analyses should be sent,

6 "Identify any information collection requirements, indicate they have been sent to OMB for review pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 and direct all comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for (Department of the Interior)."

8 Include the small entities certification (see Chapter 2 of OSM Federal Register Handbook), and

9 Identify the subject index of terms for the affected rule Part.

(d) Public participation in a proposed rulemaking may include public meetings with OSM officials and may be generated by issuing press releases, direct notification of interested parties including State and local governments and small entities, and/or publishing advertisements likely to be read by those affected. Public hearings may be held and a press release may be issued for every major rule.

(12) Final Rule. This step is to be used when developing legislative and interpretive rules and general statements of policy.

(a) If no final rule is issued after review of the comments received in response to the notice of proposed rulemaking, a notice stating that a final rule will not be published and the reasons.

(b) The lead official will develop the final rule and assure that:

1 The "Supplementary Information" section of the final rule contains a concise statement of the basis, need for, and purpose of the rule,

2 The reasons for accepting or rejecting all relevant and significant comments or groups of comments on the proposed rule are discussed,

3 It is made clear that alternative approaches were considered and the least burdensome of the acceptable approaches was chosen,

4 That the direct and indirect economic effects of the proposed rule were adequately considered,

5 That the final regulatory impact analysis, if required, adequately considered the economic consequences of the final rule,

6 The rule is written in clear English and can be understood by those who are to comply with it,

7 That the information collection and recordkeeping requirements imposed by the new rule, in coordination with the Assistant Director, Budget and Administration, have been cleared by OMB and the clearance numbers are recorded in the preamble and rule,

8 The name, address and telephone number of a knowledgeable agency official is included in the document,

9 The name of the principal author of the rule is included,

10 If a final regulatory analysis or final small entity flexibility analysis was prepared, the final rule states where copies may be obtained.

(c) The final rule must include a clear statement of the date on which it will take effect. This date will be at least 30 calendar days after the date of publication in the Federal Register for legislative rules, unless the rule grants or recognizes an exemption or relieves a restriction or there is another good cause for a shorter effective date. If a rule is to become effective in less than 30 days from the date of publication, the reason for the earlier date will be explained in the "Supplementary Information" section. Interpretive rules and general statements of policy may be made effective on date of publication.

(d) The Chief, ~~RIM~~ PPIM office will coordinate the review/approval process after the rule is surnamed by lead official and the program Assistant Director. This process includes:

1 The Associate Solicitor, Division of Surface Mining,

2 Deputy Director and Director,

3 Assistant Secretary for ~~Energy~~ Land and Minerals Mgt. (and the Secretary if so required),

4 Division of Directives and Regulatory Management, PBA,

5 Director, OMB,

6 Any other bureaus or agencies that might be affected,

7 Sending the signed rule to the Office of the Federal Register and scheduling the publication date, and

8 Sending a copy of the rule to the Administrative Record.

d. Ex parte contact is communication in relation to a rule, with anyone outside the agency, during the period after the comment period closes on the proposed rule and the time the final rule is published.

(1) Before a proposed rule is published:

(a) There is no restriction on discussing issues with persons outside the Department. No summary or record of oral contacts is required. Written material received and relied upon in the preparation of a proposed rule should be placed in the Administrative Record.

(b) Unless authorized by the Director, preliminary drafts of documents should not be released to persons outside the Department.

(2) After a proposed rule is published:

(a) There is no restriction on receiving advice or opinions on the merits of the proposal from persons outside the Department before the end of the comment period. However, it is preferred practice that opinions be submitted in writing under established public commenting procedures identified in the Federal Register notice of proposed rulemaking.

(b) A record of each ex parte contact should be made and a summary of the discussion placed in the Administrative Record. Abbreviated discussions of routine procedural or administrative matters, such as providing the closing date of the comment period, do not have to be recorded.

(3) After the comment period closes:

(a) No Department employee should receive advice or opinions on the merits of the proposal from persons outside the Department after the close of the comment period. If it is found necessary to hold such discussions, a record and summary must be placed in the Administrative Record. Any discussion that could influence the final rule may necessitate the reopening of the comment period, and should be discussed with the Associate Solicitor, DSM.

(b) Before the issuance of a final rule, Department employees may not disclose the status of a final rule, its contents, likely time of issuance, or views on the rule of any person within the Department.

e. Review Procedures. A periodic review of rules to assure their continuing relevance, adequacy, and consistency with other related rules and policies is required. OSM will review its rules at least every 5 years. The review is designed as a mechanism to ask, and answer, several basic questions pertaining to the continuing need, form, and content of the rules. Further need for a systematic review of rules may arise from OSM's internal management concerns. Following are the procedures to be followed in reviewing rules:

(1) The Chief, ~~RIM~~ PPIm will:

(a) Schedule and place the regulations to be reviewed on the semiannual agenda every April and October, prepare the initial review schedule and obtain comments/approval from Assistant Directors.

(b) Inform the appropriate Assistant Director of the need for a rule review which falls within his/her jurisdiction. This will be done by memorandum. (See Chapter 6 of the OSM Federal Register Handbook) with attachment.

(c) Coordinate the review/approval process of the notice to review rules, which includes review by the the Associate Solicitor, Division of Surface Mining and the Director.

(2) The appropriate Assistant Director will assign a member of his/her staff as the lead official for the review of each rule. To allow for a more objective review, it is recommended that the lead official not be the original author of the rule. The responsible Assistant Director may wish to appoint a regional task force for those reviews of particular regional concern or a headquarters task force in instances of reviews involving multiple program areas.

(3) The lead official will:

(a) Complete the attachment to the standard memorandum (Chapter 6 of the OSM Federal Register Handbook) and return it to RIM within 10 days of receipt. The ~~RIM~~ PPIm office will:

1 Create the necessary information for monitoring the rule, and

2 Initiate the review file for the rule in the Administrative Record.

(b) Draft a notice of intent to review rules (utilizing the format in Chapter 6 of the OSM Federal Register Handbook) and submit it to the Chief, ~~RIM~~ PPIm office to be published in the Federal Register. The notice of intent must be published in the Federal Register and must state:

1 The need for the anticipated review,

2 The subject matter of the review,

3 The key issues to be reviewed,

4 Where the public can obtain additional information regarding the rule review,

5 Where comments regarding the review of the rule should be sent, and

6 Length of the comment period (30-day minimum)

(c) Notify the Public Affairs Office which will prepare and distribute a news release.

(d) Notify the Assistant Director, Program Operations and Inspection, or Field Office Director, who will apprise the State regulatory authorities of the review and afford them an opportunity to comment. Contact with the States will be via the standard format memorandum in Chapter 6 of the OSM Federal Register Handbook.

(e) Take any other actions considered necessary for public participation in reviewing this rule.

(f) Conduct a comment analysis. This comment analysis will include:

1 Comments originally submitted to OSM when the rule was first proposed and/or any subsequent comments received about the rule when and if it was amended or revised (comments are located in the Administrative Record),

2 Comments that may have indicated problems or burdens on small entities, and

3 Comments or problems raised by OSM Field Offices, Technical Centers, or Area Offices. These comments will be solicited by the lead official through a memorandum.

(g) Conduct a review analysis. A review analysis must be conducted in sufficient detail to permit preparation of responses to each of the criteria listed below (checklist of questions is provided in Chapter 6 of the OSM Federal Register Handbook):

1 The overall scheme of the rule,

2 The continued need for the rule,

3 The ability of OSM or State agencies to enforce the rules,

4 The length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the regulation,

5 Whether the rule can be simplified or clarified, including eliminating overlapping and duplicative rules,

6 The administrative recordkeeping and reporting burden which the rule imposes on the public,

7 The need to eliminate sex-based criteria and gender-specific terminology,

8 Available alternatives which are more compatible with private economic incentives, and

9 Consideration of performance based rather than design based standards.

(h) Reconsider the information collection burden analysis. The burden analysis must be reconsidered to permit proper evaluation of the recordkeeping and reporting burden of the rule. (A checklist is provided in Chapter 6 of the OSM Federal Register Handbook.)

(i) Prepare the review document. Results of each review will be conclusions based upon the analysis of the comments and review criteria and a proposed recommendation to repeal, revise, make minor changes to the regulation or to make no change at all. The conclusions and recommendations must be documented in a detailed memorandum (sample format included in Chapter 6 of the OSM Federal Register Handbook) and forwarded from the Director to the Assistant Secretary for ~~Energy~~ and Minerals. The Chief, ~~RIM~~ PPIM office will coordinate the review and approval of the final documents through the lead official, the program Assistant Director, the Associate Solicitor, Division of Surface Mining, the Director, and the Assistant Secretary for Energy and Minerals.

(j) Implement the review document recommendation.

1 If the approval decision is to revise the rule, the lead official will initiate a rulemaking action for a major or non-major rule in accordance with paragraphs 3c(2) through 3c(11) above, as appropriate.

2 If the rule is approved for minor technical changes, e.g., corrections or simplification of language, the changes should be made by developing a correction notice in the Federal Register.

3 If the rule is approved for withdrawal, a determination of effects must be made and submitted to the Assistant Secretary for Energy and Minerals for approval. A notice of intent to repeal is published and public comments received and analyzed before the rule is finally withdrawn. A repeal is a rulemaking action (see paragraph 5b through 5k above).

(4) Monitoring of Reviews. The Chief, ~~RIM~~ PPIM office will monitor the progress of all rule reviews.

4. Reporting Requirements.

Semiannual Agenda

5. References.

a. Departmental Manual, 318 DM 1-10

b. Departmental Manual, 305 DM 1

c. Departmental Manual, 516 DM

d. 30 CFR Chapter VII

e. Executive Order 12291, "Federal Regulation," February 17, 1981

f. Regulatory Flexibility Act (P.L. 96-354)

g. Administrative Procedure Act (5 U.S.C. 551-553)

h. Federal Paperwork Reduction Act (P.L. 96-511)

i. REG-1, "Handbook on Procedures for Implementing NEPA," dated May 5, 1981

j. REG-6, "Information Collection Request," dated October 7, 1981

k. OPM-1, "Policy Guidelines for Issuance and Maintenance of Directives, dated October 2, 1981

j. OPM-5, "Delegations of Authority," dated December 2, 1981, as amended

6. Effect on Other Documents. None

7. Effective Date. Date of Issuance

8. Contact. ~~Office of Regulatory~~ Program Planning and Issues Management, (202) 343-5241

The Purpose and Scope of A Determination of Effects

A Determination of Effects (DE) is prepared:

a. To determine whether the rule is major in accordance with the criteria in paragraph 2h on page 3 of this directive and requires the preparation of a regulatory impact analysis,

b. To help identify the important economic and budgetary effects, consequences of significant alternatives (both regulatory and non-regulatory) and to ascertain whether additional information is needed,

c. To assist in choosing the alternative which best fulfills the requirements of section 2 of E.O. 12291 which establishes that:

(1) Administrative decisions shall be based on adequate information concerning the need for and consequences of the proposed action,

(2) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society,

(3) Regulatory objectives shall be chosen to maximize the net benefits to society,

(4) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen, and

(5) OSM regulatory priorities are set with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

d. To assist in choosing the alternative which best fulfills the requirements of OSM's statutory mandates, and

e. To determine whether the rule will have a significant economic effect on a substantial number of small entities in accordance with paragraph 21 on page 4 of this directive.

The scope of the DE must be broad enough to encompass all reasonable alternative formulations of the proposed rule. When significant

differences in the types and magnitude of the effects are possible, a range of estimates should be made for those alternatives given. The scope of the rule may be measured by such factors as the number of organizations, entities or individuals affected; estimated cost of compliance per affected party; estimated total cost of compliance and administration; and size of geographic region affected.

a. In many situations a "worst case" analysis, showing the expected effects of the most burdensome alternative, will be sufficient to show that the rule is not major. In situations where a "worst case" analysis is not possible or the results are ambiguous, the scope of the DE depends on such factors as the scope of the rule under consideration; the amount of public interest or controversy surrounding the rule under consideration; whether the action concerns a new rule or changes to an existing rule; and whether the rulemaking action is likely to result in an increase or decrease of regulatory burden.

b. Significant new data collection should not be required to develop the DE. Existing OSM data, or data readily available from State and local governments, other Federal agencies, or the private sector, should be sufficient. When sufficient data are not available, OSM may ask for comments from the public on the possible effects of a rule by issuing a notice of intent to propose rules.

c. Every effort is to be made to identify and describe possible direct effects of a rule, including individuals or entities affected, types of resources, methods of compliance, budgetary requirements, and type and magnitude of activity likely to be affected by the rule. These effects are to be quantified by providing numbers of affected individuals or parties, value of resources, costs of compliance, and so on. Ranges of estimates, upper and lower bounds, case study examples, and historical trends may be used, as appropriate, to quantify effects. In all cases any assumptions made are to be clearly stated.

The DE is to be based on estimates of various possible regulatory and non-regulatory alternatives. Statutory mandates or other requirements to issue or revise rules does not remove the requirement to consider alternatives. Regulatory alternatives such as different rates of activity must be examined. The alternatives considered in the DE should be similar to those considered in any NEPA compliance document. When several variations are being considered, grouping types of variations into logical alternatives should be considered. If one or more alternatives may meet one or more of the criteria in paragraph 2h, OSM should consider determining that the rule is major. All reasonable alternatives should be considered when assessing the possible effects of the rule.