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| | U. S. DEPARTMENT OF THE INTERIOR<br>OFFICE OF SURFACE MINING<br>RECLAMATION AND ENFORCEMENT<br>DIRECTIVES SYSTEM | Subject Number: REG 4-1<br>Transmittal Number: 217<br>Date: 05/29/84 |

Subject: OSM RULEMAKING POLICY AND PROCEDURES DIRECTIVE

Approval: J. Leslie Reed  Title: ACTING Director

The following changes are made to the OSM Policy and Procedure Directive:

a. Substitute the title "Assistant Secretary for Land and Minerals Management" for "Assistant Secretary for Energy and Minerals" in the following paragraphs:

| | | |
|---|---|---|
| 3b(1) | line 1 | (page 7) |
| 3c(4)(a) | line 5 | (page 12) |
| 3c(4)(b)3 | line 4 | (page 12) |
| 3c(5)(d) | line 2 | (page 16) |
| 3(12)(d)3 | line 1 | (page 22) |
| 3e(3)(i) | line 11 | (page 26) |

b. Substitute the title "Program Planning and Issues Management (PPIM) for "RIM" in paragraph 3b(5)(c) on page 8 and for "Regulatory and Issues Management" in paragraph 3b(8) on page 9 and paragraph 8 on page 27.

c. Substitute the acronym "PPIM" for the title "Regulatory and Issues Management Office (RIM)" in paragraph 3b(6)(a), line 6 on page 9 and for the acronym "RIM" in the following paragraphs:

| | | |
|---|---|---|
| 3b(9)(f) | line 1 | (page 10) |
| 3c(2)(c)(3) | line 1 | (page 12) |
| 3c(3) | line 2 | (page 12) |
| 3c(4)(d) | line 2 | (page 12) |
| 3c(10)(d) | line 1 | (page 19) |
| 3c(11)(b) | line 1 | (page 19) |
| 3c(12)(d) | line 1 | (page 22) |
| 3e(1) | line 1 | (page 24) |
| 3e(3)(a) | line 3 | (page 24) |
| 3e(3)(b) | line 3 | (page 24) |
| 3e(3)(i) | line 8 | (page 26) |
| 3e(4) | line 1 | (page 26) |

d. Revise paragraph 3c(4)(e) on page 13 to read "See Appendix A of this Directive for the purpose and scope of the DE."

# CHANGE NOTICE

e. Delete paragraph "3c(4)(e)1-5" and paragraphs "3c(4)(f)-(h)" on pages 13, 14 and 15.

f. Change paragraph "3c(4)(i)" on page 15 "3c(4)(f)."

g. Add "and submit to OMB no later than the day on which the Notice of Proposed Rulemaking is published in the Federal Register," after "OMB," in paragraph 3c(11)(a)3, line 4 on page 19.

h. Revise paragraph 3c(11)(c)6 on page 20 to read "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)."

i. Add attached section as Appendix A.

## 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.

When making a judgment on the interpretation of the criteria in paragraph 2h on page 3 of this directive, 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:

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

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

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

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

e. Examine the estimated percentage increase in costs or prices, or

f. 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.