

Department of the Interior Bureau of Ocean Energy Management Manual

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Series: Administrative

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Chapter 1: Regulatory Development Procedures

Office of Primary Responsibility: Office of Regulatory Affairs

BOEMM 318.1

2.1 **Purpose.** This manual chapter establishes the Bureau of Ocean Energy Management (BOEM) procedures for regulatory development. BOEM's Office of Regulatory Affairs (ORA) leads and oversees the development of BOEM regulatory actions and interagency reviews.

2.2 **Scope.** The policy and requirements in this chapter apply to all regulatory documents prepared for publication in the Federal Register.

2.3 **Objective.** This chapter defines BOEM responsibilities and procedures in the BOEM rulemaking process.

2.4 **Authority.**

A. 5 U.S.C. Chapter 5, Subchapter II (551-559), "Administrative Procedure" also known as the Administrative Procedure Act.

B. 318 Department Manual (DM) 1, "Promulgating Regulations."

C. 318 DM 2, "Regulatory Planning."

D. 318 DM 3, "Federal Register Notices."

2.5 **Reference.** Office of the Federal Register "Document Drafting Handbook."

2.6 **Definitions.**

A. Advance Notice of Proposed Rulemaking (ANPRM). An ANPRM is an announcement that the bureau is considering developing a regulatory action. It is typically used when a rule is expected to be unusually complex or controversial. The ANPRM will include a request for public comment on issues that the rule should address, possible approaches to important issues, and the need for particular regulatory provisions.

B. Analytical Blueprint. An analytical blueprint is a Workgroup's plan for obtaining necessary information and conducting analyses to support regulatory development. The blueprint describes how and what information the Workgroup will collect, as well as how the Workgroup will analyze and evaluate the information to develop policy options.

C. Direct Final Rule. When addressing a routine or uncontroversial matter, the bureau may publish a direct final rule in the Federal Register. In a direct final rule, the agency states that the rule will go into effect on a certain date unless it gets substantive adverse comments during the comment period. An agency may finalize this process by publishing in the Federal Register a confirmation that it received no adverse comments. If adverse comments are submitted, the agency is required to withdraw the direct final rule before the effective date. The agency may restart the process by publishing a proposed rule or decide to end the rulemaking process entirely.

D. Final Rule. This regulatory action is the culmination of a multi-step rulemaking process (as opposed to issuance of a direct final rule) and follows the issuance of a Notice of Proposed Rulemaking (NPRM). In a final rule, the agency concludes the proposed regulatory provisions will help accomplish the goals or solve the problems identified in the NPRM. The agency responds to public comment on the proposed rule and makes appropriate revisions to the regulatory action. The Final Rule is published in the Federal Register.

E. Interim Final Rule. When there is good cause to issue a final rule without first publishing a proposed rule, the bureau may publish an interim final rule. This type of rule becomes effective immediately upon publication. An interim final rule must explain why publishing a proposed rule is unfeasible, unnecessary, or contrary to the public interest, to comply with 5 U.S.C. 553(b). In most cases, the agency stipulates that it will alter the interim rule if warranted by public comment. If the agency decides not to make changes to the interim rule, it generally publishes a brief final rule in the Federal Register confirming that decision.

F. Notice of Proposed Rulemaking (NPRM). The proposed rule, or NPRM, is the official document that announces and explains the agency's plan to address a problem or to accomplish a goal through regulations. All proposed rules must be published in the Federal Register to notify the public and to give them an opportunity to submit comments. The proposed rule and any revisions to the language based on public comments received on it form the basis of the final rule.

G. Regulation or Rule. A regulation is a general statement issued by an agency, board, or commission that has the force and effect of law. Congress often grants agencies the authority to issue regulations. Sometimes Congress requires agencies to issue a regulation; sometimes Congress grants agencies the discretion to do so. Many laws passed by Congress give Federal agencies some flexibility in deciding how best to implement those laws. Federal regulations specify the details and requirements necessary to implement and to enforce legislation enacted by Congress.

H. Rulemaking. Rulemaking is the process used to formulate, amend, or rescind a regulation. The same procedures and requirements apply to amending or rescinding any regulation as apply to adding a new regulation.

I. Workgroup. A Workgroup is a team of individuals from BOEM; the Office of the Solicitor (SOL), if applicable; and other Department of the Interior (DOI) offices, if applicable, that have been assigned to support the development of a BOEM regulatory action. These individuals are typically experts on specific BOEM program areas. The Workgroup members are expected to provide relevant expertise and feedback from BOEM colleagues to support the regulatory action.

J. Workgroup Chair. The Workgroup Chair, an ORA staff member, is the regulatory lead responsible for coordinating the drafting of an assigned regulatory action and supporting the clearance, coordination, publication, and promulgation of the regulations through BOEM, the Department, and interagency review and clearance processes.

2.7 **Policy**. BOEM promulgates rules as warranted by statutory and judicial mandates and consistent with administration policy, guided by the bureau mission to manage development of U.S. Outer Continental Shelf energy, mineral, and geological resources in an environmentally and economically responsible way. BOEM develops rules that fairly consider stakeholder inputs as appropriate and are designed to achieve statutory and regulatory objectives in a cost-effective manner as described in Executive Order (E.O.) 12866.

2.8 **Responsibilities.**

A. Director/Deputy Director. The BOEM Director, and/or Deputy Director, will:

(1) Determine BOEM's policy priorities in accordance with the priorities of DOI and the Administration.

(2) Decide whether or not to develop regulations in response to proposed initiatives from BOEM staff or external sources before a Workgroup is established, and assign and communicate the prioritization of ongoing regulatory development efforts.

(3) Provide early guidance to the Workgroup on regulatory actions.

(4) Evaluate options and recommendations presented by the Workgroup and provide leadership direction in the development process before the Workgroup completes drafting of the regulatory action.

(5) Ensure that adequate resources and leadership support are provided for regulatory development processes.

(6) Involve the Office Director of ORA, Associate Directors, Regional Directors, and other members of the Senior Leadership Team as appropriate in policy and

planning initiatives relevant to regulatory actions, to ensure that relevant policies and initiatives are properly incorporated in regulatory actions.

(7) Ensure that the policies and objectives of this manual chapter are adhered to throughout BOEM.

(8) As necessary, grant any exceptions to the processes or policies outlined in this manual chapter.

(9) Review and surname all rulemaking documents before they are sent for Assistant Secretary for Land and Minerals Management (AS-LM) signature in accordance with policy and procedures outlined in 318 DM 1-3.

B. Office of Regulatory Affairs (ORA). ORA will:

(1) Guide the Workgroup in receiving early guidance from bureau leadership.

(2) Coordinate with the Workgroup to develop the analytical blueprint and submit to the Director.

(3) Coordinate with the Workgroup to prepare a briefing package that outlines the recommendations/options, available information on costs and benefits, summary of other DOI bureau or equivalent offices' positions on the options, and a brief summary of technical, legal, and policy issues.

(4) Communicate the Director's regulatory development schedule to the Workgroup.

(5) Present the recommendations/options to the Directorate, AS-LM, and the Secretary's Office, as appropriate, and gather their input to determine the final options for the regulatory actions.

(6) Secure the regulation identifier numbers from the Department for each approved regulatory action.

(7) Manage BOEM's inputs into the Regulatory Information Service Center/Office of Information and Regulatory Affairs Consolidated Information System.

(8) Review regulatory proposals and regulatory actions developed within BOEM or externally to ensure that they are consistent with bureau and programmatic policy and planning objectives, as well as statutory, DOI, Office of Management and Budget (OMB), and interagency review requirements.

(9) Review, coordinate, and develop feedback on rules and related regulatory documents under E.O. 12866 review.

- (10) Coordinate the review of BOEM rules and regulatory proposals with other government agencies whose programs or activities are relevant to regulatory actions under development by BOEM.
- (11) Prepare the BOEM 90-Day List, Semi-annual Agenda of Regulatory and Deregulatory Actions, and Regulatory Agenda.
- (12) Notify Program and Regional Offices of Spring and Fall Regulatory Agenda publication.
- (13) Coordinate with SOL to ensure regulatory actions are legally defensible.
- (14) Coordinate with the Office of the Federal Register to ensure procedural, technical, and formatting compliance.
- (15) Serve as the BOEM liaison to the Office of the Executive Secretariat and Regulatory Affairs (OES) and OMB on regulatory actions.
- (16) Identify information collections and ensure all Paperwork Reduction Act (PRA) requirements are addressed in the regulatory actions. Develop PRA supporting documents as required by OMB. Coordinate with the Department's Information Collection Clearance Officer (ICCO) to review the regulatory actions and make PRA determinations related to information collection requirements. Notify the Department ICCO when proposed and final rules publish in the Federal Register.
- (17) Ensure regulatory actions comply with Congressional Review Act requirements.
- (18) Maintain adequate records of ORA regulatory activities.
- (19) Manage the public comment process on regulatory actions. Ensure that all comments are considered, recorded, archived, reported, and responded to accurately in accordance with the requirements of the PRA and DOI policy.
- (20) Manage the regulatory docket for each regulatory action. Coordinate with Workgroup members to ensure technical support documents, records of consultations and informational meetings, and other documents associated with the regulatory action are adequately docketed.
- (21) Coordinate with program and regional offices to conduct stakeholder outreach.
- (22) Participate in Government-to-Government consultations, as appropriate.
- (23) Ensure that eCFR.gov has been updated consistent with the final rule.

(24) Perform any other functions required to manage BOEM's regulatory action development process.

(25) In some cases, ORA may also act as the Office of Primary Responsibility (OPR) for administrative and other regulatory actions.

C. Office Director, ORA. The Office Director of ORA will:

(1) Lead and oversee BOEM's regulatory program in accordance with BOEM authorities and the priorities of the BOEM Director, AS-LM, and DOI.

(2) Serve as the focal point for BOEM's regulatory actions within the bureau and as the BOEM lead for regulatory work with other DOI bureaus and equivalent offices, the Department, OMB, and other Federal agencies.

(3) Respond to data-calls and interagency reviews related to the regulatory action development process.

(4) Provide timely updates to the Director and Deputy Director to ensure regulatory actions are consistent with bureau and programmatic policy initiatives and other BOEM policies.

(5) Coordinate, as appropriate for internal consistency and conformance with statutory, DOI, OMB, Departmental, and interagency requirements.

D. Regional Directors and Associate Directors. Regional Directors and Associate Directors will:

(1) When designated as the OPR by the Director, identify potential new or amended regulatory text to advance BOEM policy as described in paragraph 2.7 above. Serve as the OPR when designated by the Director and collaborate with ORA in proposing regulatory actions to the Director. There may be multiple OPRs for one regulatory action.

(2) As appropriate, conduct the required analyses for the regulatory action, including environmental and economic analyses. Support ORA in the development of recommendations/options for regulatory policy decisions and complete the work as needed to get the regulatory policy decisions from the Director and/or AS-LM (or above).

(3) In conjunction with ORA, provide support to the Director in establishing BOEM regulatory priorities and keep ORA apprised of developments and initiatives that may impact BOEM regulations.

(4) Review and surname rules relevant to Regional/Program Office operations and responsibilities to ensure that all documents are technically accurate, complete, and conform to relevant statutes, policies, and other requirements.

(5) Assign staff to serve as subject matter experts (SMEs) in the Workgroup and assist in the comprehensive development of rules and supporting documentation.

(6) Maintain adequate records of the activities of its office or region to support rulemaking decision files.

(7) Support the Workgroup, internal stakeholders, surnaming passbacks, and rulemaking schedules in accordance with BOEM priorities.

(8) Associate Directors and Regional Directors who are not designated as OPR also carry out the tasks in paragraphs 2.8.D.2-7 as appropriate.

E. Workgroup Chair. The Workgroup chair will:

(1) Guide the workgroup in soliciting early guidance from bureau leadership.

(2) Coordinate with the Workgroup to draft the analytical blueprint and submit to the Director.

(3) Coordinate with the Workgroup to prepare a briefing package that outlines the recommendations/options.

(4) Develop and manage an overall schedule for the regulatory development process.

(5) Communicate the regulatory option(s) selected by the bureau leadership to the Workgroup.

(6) Lead the drafting of regulatory actions and regulatory proposals. Ensure that technical language is drafted in a clear and concise manner for the public and is consistent with bureau, Department, OMB, and Office of the Federal Register requirements.

(7) Evaluate and address interagency review of BOEM rules and regulatory proposals.

(8) Adjudicate bureau, Department, and interagency edits and comments received during the regulatory development process.

(9) Communicate and coordinate with the Office of the Solicitor to support the legal defensibility of the regulatory action.

(10) Coordinate with the bureau's ICCO to ensure that regulatory actions comply with PRA requirements.

- (11) In coordination with Workgroup, respond to and address all relevant public comments received in connection with regulatory actions and ensure that all comments are considered, recorded, archived, reported, and responded to accurately.
- (12) Ensure consistency between any given regulatory actions and any economic, Tribal, and environmental impact assessment documents.
- (13) Maintain records for administrative record.
- (14) Coordinate with program and regional offices, solicitors, and other bureaus and equivalent offices to ensure all regulatory and technical support documents are developed, reviewed, and uploaded to regulatory docket in a timely manner.
- (15) Populate the regulatory docket with appropriate technical and regulatory support materials.
- (16) Perform other functions as required to facilitate DOI's regulatory action development process.
- (17) After promulgation, work with Government Publishing Office to ensure the Code of Federal Regulations accurately reflects the final regulatory text.

F. Workgroup. The Workgroup will:

- (1) Be composed of the Workgroup Chair, SMEs from program and regional offices, economists, environmental analysts, solicitors, and as appropriate, TLO-assigned staff member.
- (2) Draft assigned regulatory actions and regulatory proposals to ensure that they meet the assigned policy goals and objectives.
- (3) Evaluate and respond to bureau, Department, SOL, and interagency review of BOEM rules and regulatory proposals.
- (4) Support the drafting, development, and promulgation of BOEM rules consistent with bureau priorities.
- (5) Assist in drafting the response to all relevant public comments received on regulatory actions and support work to ensure that all comments are considered, recorded, archived, and reported and responded to accurately.
- (6) Support consistency between any given regulatory action and any economic, Tribal, and environmental impact assessment documents.
- (7) Perform other functions as required to support BOEM's regulatory action development process.

G. Subject Matter Experts (SMEs). SMEs will:

- (1) Serve as members of the Workgroup representing the views of their respective program office, regional office, or the Office of Director, as appropriate.
- (2) Have primary responsibility for ensuring the technical and scientific accuracy of the materials prepared.
- (3) Have primary responsibility to keep their direct supervisors and senior leadership informed and updated on the technical and policy details related to the regulatory action.
- (4) Ensure that relevant research and analysis underlying the conclusions in the regulatory action are sound.
- (5) Bring in other technical and scientific experts as needed.
- (6) Assist in writing the preamble, regulatory text, and responses to public comments.
- (7) Address surnaming and interagency comments as guided by the Workgroup Chair.
- (8) Participate in stakeholder outreach as guided by Workgroup Chair.

H. Division Manager, Economics Division, Office of Strategic Resources Programs. The Division Manager, Economics, will:

- (1) Oversee the development of all economic and regulatory impact analyses, evaluations, and determinations in support of BOEM regulatory actions and ensure they are completed according to the Director's regulatory development schedule.
- (2) Provide ongoing economic analysis and support to each Workgroup.
- (3) Coordinate with the Office of Policy Analysis (PPA) to ensure that the Regulatory Impact Analyses for significant regulatory actions are reviewed by PPA prior to the OES review of the regulatory package.
- (4) Provide ORA with all supporting economic evaluations and impact analyses, cost-benefit analyses, and other related documents for the docket.

I. Associate Director, Office of Environmental Programs (OEP). The Associate Director of OEP will:

- (1) Provide environmental impact analysis of BOEM regulatory actions.

(2) Oversee all relevant environmental analyses, documentation, and consultations in support of regulatory actions in accordance with the National Environmental Policy Act, other statutory and E.O. requirements, and according to the Director's schedule and priorities. Unless otherwise specified by the OPR, OEP will conduct environmental analysis for regulatory development.

(3) Suriname rules for adequacy and completeness of the National Environmental Policy Act analyses, consultations, reports, categorical exclusions, and other related environmental analysis efforts in support of regulatory actions.

(4) Create and maintain documentation and records with respect to environmental analyses, consultations, reports, categorical exclusions, and other related environmental analysis efforts in support of rulemaking decision files.

(5) Provide ORA with all supporting environmental analyses, consultations, reports, categorical exclusion reviews, and other related documents for the docket.

J. Tribal Liaison Officer (TLO). The TLO will:

(1) Make determinations on Tribal implications for rules. Promptly notify ORA of any revised determinations and any associated Tribal actions with regulatory implications.

(2) Analyze information on any potential Tribal implications as the rule is developed from the TLO-assigned Workgroup member.

(3) Carry out the responsibilities of the TLO specified in BOEM's Tribal Consultation Guidance.

(4) Suriname rules confirming adequacy of Tribal analyses in support of BOEM regulatory actions.

(5) Create and maintain documentation and records with respect to Tribal analyses, consultations, reports, and other relevant items in support of rulemaking decision files.

(6) Provide ORA and the Workgroup with all supporting Tribal analyses, consultations, reports, and other related documents for the docket.

(7) Collaborate with Regional Tribal Liaisons on regulatory activities associated with Tribal impact in the regions.

K. Office Director, Office of Communications (OOC). The Office Director of OOC will:

(1) Work with ORA to develop a communications plan, including fact sheets and other communication materials, for each BOEM rule in accordance with the Director's schedule and priorities.

(2) Support the regulatory program by posting BOEM regulations to internal and external websites.

2.9 **Procedures.** The procedure will include the following steps:

A. The Director and/or the OPR will identify the need for new or revised regulatory actions. Together ORA and the OPR will solicit early guidance from the Director. ORA and the OPR together will determine what other offices or bureaus should be involved in the regulatory development.

B. The OPR and ORA will coordinate with other appropriate offices and ensure that the required analyses for regulatory actions are conducted consistent with the Director's schedule. Working with ORA, OPR will support the work needed to get policy decisions from BOEM and Department leadership. Based on the policy decisions, ORA will coordinate with the OPR to draft the rule. ORA and the OPR will jointly ensure that all relevant economic, environmental, information collection, and legal and Tribal reviews, analysis, and consultations occur consistent with the Director's schedule.

C. ORA will coordinate communications with other affected bureaus and agencies and will respond to inquiries from those bureaus, the Department, and OMB. Once the regulatory action has been drafted, ORA will manage the surnaming process through BOEM and the Department and, once all necessary clearances have been obtained, will arrange for signature.

D. After signature, ORA transmits the regulatory action to the Office of the Federal Register for publication.

E. For any applicable final rules, consistent with Congressional Review Act requirements, ORA submits a report on each new final rule to both chambers of Congress and to the Government Accountability Office.

F. After a final rule's effective date, ORA reviews the eCFR to confirm it has been updated consistent with the final rule regulatory text.