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## Department of the Interior

# Departmental Manual

**Effective Date:** 5/14/98

**Series:** Administrative Procedure

**Part 318:** Federal Register Documents

**Chapter 6:** Clearance Procedures

**Originating Office:** Executive Secretariat and Office of Regulatory Affairs

### 318 DM 6

**6.1 What does this chapter do?** This chapter tells you how to get the approvals you need before you can publish your Federal Register document.

**6.2 What approvals must I get before a document is signed?** Except as provided in 6.10, the following reviewers must approve before signature each rulemaking document prepared for signature by a Secretarial Officer:

A. Office of the Solicitor; (We recommend that you begin consulting informally with SOL early in the rulemaking process.)

B. ORA;

C. PPA when economic or benefit-cost analyses are involved; (We recommend that you begin consulting with PPA early in the rulemaking process and reach a general understanding on analytical requirements and approaches.)

D. Bureau Information Collection Clearance Officer; and

E. Other bureaus/offices that have been involved in the planning and development of the document.

**6.3 When must I obtain ORA approval?** You must submit your rule to ORA for approval at the same time as you submit it to other offices external to your bureau for review and surnaming. You must also submit your ROC (see Chapter 3) to PPA at that time.

**6.4 Does ORA have to review all rulemaking documents?** Yes. You must submit all ANPRMs, proposed and final rules, and other policy making documents to ORA.

**6.5 How much time should I allow for ORA review?** We will complete review of each rule within 10 working days of receipt. After you have obtained all necessary surnames and your rule has been signed, you must return the rule and a copy of the surnames you have obtained to ORA, where we will complete our final administrative review within 2 working days.

**6.6 How can I get ORA review in less than 10 working days?** If you need Departmental review in less than 10 working days, notify us and explain why you need expedited review (e.g., if there is a statutory or judicial deadline). We will honor your request if workload permits.

**6.7 Should I send the original document to ORA?** No. Send us a copy of your document. If OMB will review the rule, send us the original E.O. 12866 Submission Form (see Illustration 1 to this Chapter). Keep the original rule and internal file copies until the rule is approved for publication.

**6.8 How can I expedite the approval process?** You may ask us for assistance in expediting any part of the approval process after a document leaves your bureau. You may also ask us to obtain external surnames for you. In addition, you may contact PPA on analytical and economic issues in sufficient time to reduce any delays on that score.

**6.9 What additional approval is required if a document affects small businesses?** If the rule will have a significant economic effect on a substantial number of small entities, you must get the approval of the Office of Small and Disadvantaged Business Utilization as well as the offices listed in section 6.3.

**6.10 Are there any exceptions to the requirements of section 6.2?** Yes. The following documents are the only exceptions to the clearance procedures contained in section 6.2:

A. Public Land Orders. Send these documents to the following offices for review:

- (1) Field office (including the Field or Regional Solicitor);
- (2) Bureau of Land Management review;
- (3) BLM Regulatory contact;
- (4) Director, BLM;

(5) Other affected bureaus; and

(6) Assistant Secretary - Land and Minerals Management.

B. Environmental Impact Statement (EIS) Notices of Availability. Send these documents for review in accordance with the table below.

If the decision authority for the EIS is assigned...	the notice must be cleared and signed by...
to the bureau	the bureau head.
to the program Assistant Secretary	the program Assistant Secretary.
above the Assistant Secretary level	the Office of Environmental Policy and Compliance (clearance), the Assistant Secretary - Policy, Management and Budget or his/her designee (signature).
to more than one program Assistant Secretary	the Office of Environmental Policy and Compliance (clearance), the Assistant Secretary - Policy, Management and Budget or his/her designee (signature).

C. State and Tribal Program Amendments under Titles IV and V of the Surface Mining Control and Reclamation Act of 1977. Actions by the Office of Surface Mining Reclamation and Enforcement to approve, disapprove, or supersede amendments to State and tribal programs under Titles IV and V of the Surface Mining Control and Reclamation Act of 1977 are reviewed in the field by the Office of the Solicitor and then signed by an OSM official prior to publication in the Federal Register.

6.11 **Who signs rules?** A Secretarial Officer (the Secretary, the Deputy Secretary, the Solicitor, and the Assistant Secretaries) signs rulemaking documents under the conditions in their delegation chapters (the 200 Series of the Departmental Manual). In addition, officials in the Office of Surface Mining Reclamation and Enforcement have been delegated authority to sign rules approving, disapproving, or superseding amendments to State and tribal programs under Titles IV and V of the Surface Mining Control and Reclamation Act of 1977.

6.12 **What additional documentation do I need for a significant rule?** For each significant rule (under E.O. 12866), you must send us:

A. A copy of the rule;

B. A description of the need for the rule and an explanation of how the rule fulfills that need;

C. A cost-benefit analysis;

D. An explanation of how the rule is consistent with a statutory mandate; and

E. A statement of how the rule promotes the President's priorities and avoids undue interference with State, local, or tribal governments.

**6.13 What additional material must I send to ORA for an economically significant (under E.O. 12866) rule?** If your rule has an annual effect on the economy of \$100 million or more, or adversely affects the economy, the environment, public health or safety, or other levels of government, you must send us:

A. An analysis and quantification of the costs and benefits of both the rule and any reasonably feasible alternatives to the rule; and

B. An explanation of why the alternative you selected is preferable to other alternatives.

**6.14 What other information must I submit when a rule affects a substantial number of small entities?** When a rule has a significant economic impact on a substantial number of small entities, you must send us a copy of any initial or final regulatory flexibility analysis as well as a description of steps taken to minimize that impact. See Appendix 3 to Chapter 3.

**6.15 Can I get extra time to work on my small entity flexibility analysis?**

A. The Secretary may delay or waive publication of the initial regulatory flexibility analysis. He/she may delay, but not waive, the final regulatory flexibility analysis. To do this, he/she must publish a notice in the Federal Register.

(1) The notice must state that the rule is being published to respond to an emergency that makes timely completion of a small entity flexibility analysis impractical.

(2) The finding must be published no later than the final rule and must include the reasons for the finding.

(3) The finding may be subject to judicial review under §611 of the Regulatory Flexibility Act.

B. If you delay preparing an analysis under paragraph A, you must publish a final regulatory flexibility analysis within 180 days of publishing the final rule. If you do not, the rule will lapse and have no effect. In this case, you cannot republish the rule until you publish a final small entity flexibility analysis.

C. See guidance in Appendix 3 to Chapter 3.

**6.16 Do I need a memorandum for reviewers?** No. The preamble and the rule should be self-explanatory.

**6.17 When will a press release accompany a rule?** Your bureau public affairs office should coordinate with the Office of Communications on whether a press release is necessary. If a press release is prepared, you must circulate it with the rule, and you must send the Office of Communications a file copy of the rule.

**6.18 What must I include when I send a rule to the Office of Management and Budget for review?** You must complete an OMB Form 83-R and attach it to your rule. An ORA official must sign the OMB Form in addition to the Program Official and Authorized Regulatory Contact. Send OMB three copies of the same material that you send us under sections 6.12-6.14. However, if your rule is economically significant as defined by E.O. 12866 section 3(f)(1) or imposes an "unfunded mandate" as defined by 2 U.S.C. 1532, you must send four copies of the rule and supporting material.

**6.19 How long will OMB take to review a rule?** If OMB must review your rule, OMB has the following time frames to complete the review under E.O. 12866:

For a ...	OMB may take no longer than...
notice of intent, advance notice of proposed rulemaking, or other preliminary action	10 working days
regulatory action that OMB has not previously reviewed	90 calendar days
regulatory action that OMB has previously reviewed and that you have not changed materially	45 calendar days

**6.20 Will OMB expedite review of a rule in an emergency?** You must schedule development of each rule to allow enough time for OMB review. If, due to unforeseen circumstances, you need OMB approval before the deadlines in section 6.19, call your bureau regulatory contact as soon as possible.

**6.21 How does OMB approval of collections of information under the Paperwork Reduction Act affect approval of a rule?** OMB must approve each proposed rule containing a collection of information. An OMB form 83-I and supporting statement must be completed and submitted to OMB when the NPRM is published. The 83-I and supporting statement must be approved by the Department (PPA) before it may be sent to OMB. You may not submit to OMB a final rule containing a collection of information until OMB has approved the collection. See 381 DM 11 and 12 and Attachment 2 ("Collections of Information from the Public: Interim Guidelines") of the Interim Guidelines issued by PPA (dated March 20, 1997) for guidance in preparing the supporting statement, and consult with your bureau information collection officer.

**6.22 What is the last step before I send a rule to be published?** You must send us a copy of each rule for a final review after signature. Keep the original signed rule and internal file copies

until the rule is approved for publication. You may not send a rule to the Federal Register until we have completed our final review. We will complete this review within 48 hours of receipt of each rule.

**6.23 What other copies of final rules must I distribute?** To comply with the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801), you must distribute copies of each final rule and related material as indicated in the table below. You must deliver these copies before the final rule can take effect.

You must send to...	the following material...
The Speaker of the House of Representatives	- A transmittal memo in the format contained in Appendix 1 to this Chapter  - A copy of the rule
The President of the Senate	- A transmittal memo in the format contained in Appendix 1 to this Chapter  - A copy of the rule
The General Counsel of the General Accounting Office	- A transmittal memo in the format contained in Appendix 1 to this Chapter  - A copy of the rule  - A copy of any cost/benefit analysis prepared for the rule  - A copy of any regulatory flexibility analysis prepared for the rule  - A copy of any unfunded mandates analysis prepared for the rule

**6.24 When will a final rule become effective?** You must specify an effective date in the preamble of the final rule. The effective date for a non-major (under SBREFA) rule generally must be at least 30 days after transmittal to Congress. For a major rule, the effective date must be 60 days after transmittal to Congress (see 5 U.S.C. 808 for certain limited exceptions). The rule will become effective on this date unless Congress disapproves it under 5 U.S.C. 802.

**6.25 Can a final rule ever become effective less than 30 days after publication?** Yes. For a rule to become effective sooner than 30 days after publication, you must explain in the preamble that you have established an earlier effective date because the rule meets one of these conditions:

- A. The rule grants an exception or relieves a restriction;
- B. The rule is an interpretation or policy statement; or
- C. You have a good cause for the rule to become effective earlier.

**6.26 How do I incorporate material by reference?** Incorporation by reference allows you to refer to materials, such as technical standards, that are already published elsewhere. The Director of the Federal Register must approve each incorporation by reference. See the Document Drafting Handbook and 1 CFR 51 for instructions on how to incorporate material by reference.

**6.27 What Department clearances do I need for a Federal Register notice?** The approval requirements for notices depend upon the level at which they are signed. Notices should generally be signed at the lowest appropriate level. If you have questions about what approvals are required for a notice or at what level it should be signed, call your bureau regulatory contact or ORA.

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**Appendix 1 to Chapter 6**

[Date]

Honorable Newt Gingrich  
 Speaker of the House of  
 Representatives  
 The Capitol, Room H-209  
 Washington, D.C. 20515

**BY HAND**

Dear Mr. Speaker:

Attached please find a final rule submitted for your review in accordance with the requirements of Public Law 104-121.

A concise general statement relating to the rule, in conformity with the public law, may be found on the first page of the rule. Please refer any questions about the rule to the contact person named in the rule's preamble.

Sincerely,

Assistant Secretary

Attachment: [Give title of rule]

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[Date]

Honorable Al Gore

President of the Senate

The Capitol, Room S-212

Washington, D.C. 20510

BY HAND

Dear Mr. President:

Attached please find a final rule submitted for Congressional review in accordance with the requirements of Public Law 104-121.

A concise general statement relating to the rule, in conformity with the public law, may be found on the first page of the rule. Please refer any questions about the rule to the contact person named in the rule's preamble.

Sincerely,

Assistant Secretary

Attachment: [Give title of rule]

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[Date]

Mr. Robert P. Murphy

General Counsel

U.S. General Accounting Office

441 G Street NW

Washington, D.C. 20548

BY HAND

Dear Mr. Murphy:

Attached please find a final rule submitted for your review in accordance with the requirements of Public Law 104-121.

A concise general statement relating to the rule, in conformity with the public law, may be found on the first page of the rule. Please refer any questions about the rule to the contact person named in the rule's preamble.

Sincerely,

Assistant Secretary

Attachment: [Give title of rule]

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Department of the Interior

Transmittal and Receipt for Rulemaking Document

(Pursuant to 5 U.S.C. §801)

To:	<input type="checkbox"/> Senate	Major rule:	<input type="checkbox"/> Yes
	<input type="checkbox"/> House		<input type="checkbox"/> No
	<input type="checkbox"/> General Accounting Office		
Title of rule:			
Bureau:			
RIN:			
Proposed effective date:			

For submissions to the Comptroller General only, in accordance with the statute, the following, if applicable, are included in the preamble to

the rulemaking document or as separate documents, as indicated below. (These documents are also available to both Houses of Congress upon request.)

Item	In preamble	Separate document
Cost/benefit analysis	.	.
Actions relating to 5 U.S.C. §§ 603, 604, 605, 607, and 609 (Regulatory Flexibility Act)	.	.
Actions relevant to 2 U.S.C. §§ 1532, 1533, 1534, and 1535 (Unfunded Mandates Reform Act)	.	.
Other relevant information under another Act or Executive Order	.	.

Document received by: \_\_\_\_\_

Date received: \_\_\_\_\_

5/14/98 #3210

Replaces 12/26/85 #2663

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