

**DEPARTMENT OF THE INTERIOR (DOI)****Statement of Regulatory Priorities**

The Department of the Interior (DOI) is the Nation's principal conservation agency, responsible for the management of much of our public lands and resources. It also has major responsibility for actions involving American Indians, Alaska Natives, and residents of island territories under the administration of the United States. Its mission is to encourage the conservation and responsible management of the Nation's natural resources and to fulfill the trust responsibilities of the U.S. Government.

In carrying out these responsibilities, the Department pursues the following major objectives:

- Preserving the nation's national park, wilderness, and fish and wildlife resources, and managing its public lands;
- Managing the supply of quality water resources;
- Improving the Federal Government's relationship with State, local, tribal, and territorial governments;
- Promoting the economic and social well-being of American Indians, Alaska Natives, and people of the U.S. territories; and
- Enhancing America's ability to meet its needs for domestic energy and mineral resources.

**Major Regulatory Areas**

Only one of DOI's ten bureaus—the Office of Surface Mining Reclamation and Enforcement—is primarily engaged in activities most often considered “regulatory.” Its regulations set environmental standards for coal mining and reclamation operations and ensure that these standards are met through State programs.

A number of other bureau activities, however, have regulatory components. Those regulations serve primarily to facilitate DOI programs, which focus upon the management of public or trust lands and natural resources under U.S. ownership or control. Some of the major areas of these regulations include:

- Management of migratory birds and preservation of certain marine mammals and endangered species;
- Management of dedicated lands, such as national parks, wildlife refuges, and American Indian trust lands;
- Management of public lands open to multiple use;
- Leasing and oversight of development of Federal energy, mineral, and renewable resources;

- Management of revenues from American Indian and Federal minerals;
- Fulfillment of trust and other responsibilities pertaining to American Indian tribes;
- Natural resource damage assessments; and
- Management of financial and nonfinancial assistance programs.

**Regulatory Policy*****DOI Regulatory Procedures and Their Consistency With the Administration's Regulatory Policies***

Within the general requirements and guidance set forth in Executive Orders 12866, 12612, and 12630, DOI's regulatory program seeks to accomplish the following: (a) fulfill all legal requirements as specified by statutes or court orders; (b) perform essential functions that cannot be handled by non-Federal entities; (c) minimize regulatory costs to society while maximizing societal benefits; and (d) operate programs openly, efficiently, and in cooperation with Federal and non-Federal entities.

To help meet these objectives, the Department has restructured its regulatory process. In mid-1993, it created the Office of Regulatory Affairs (ORA) within the Office of the Secretary. A primary function of ORA is to help ensure that regulations are promulgated in a timely and efficient manner. As part of this task, ORA requires that all bureaus/offices establish realistic rulemaking schedules. ORA then monitors the development of all rulemakings to ensure that deadlines are met. This structure allows the public to plan more effectively for anticipated regulatory changes and helps regulators focus more clearly upon issues to be regulated.

ORA also coordinates the development of rules that cross bureau or Departmental jurisdictional lines and helps ensure that agreements are reached on policy issues early in the rulemaking process. This system substantially reduces delays caused by the late intervention of interested parties.

***Encouraging Responsible Management of the Nation's Resources***

One of DOI's fundamental goals is to encourage the responsible management of the Nation's natural heritage. The regulatory program is designed to help achieve this by striking appropriate balances between the use and preservation of natural resources. For example, the Department is seeking

ways to provide incentives for users of public resources to adopt long-term strategies designed to meet current needs while preserving resources for future generations. DOI also is seeking to ensure that the Government receives fair prices for public resources.

***Minimizing Regulatory Burdens***

DOI has made a major effort to streamline its regulations and to reduce the burdens that they impose. Planning processes for land use and water development have been substantially modified to reduce unnecessary delays and paperwork associated with agency decisionmaking. Moreover, DOI is currently reviewing regulations to determine whether their benefits continue to outweigh their costs to society. Rules will continue to be reassessed periodically, and needed changes will be made as existing operations are evaluated.

The Department's review of potential rules focuses both on assuring consistency with broad regulatory policies and goals and on making certain that rules are technically feasible and understandable. DOI is encouraging the use of performance standards rather than traditional command-and-control regulations, providing regulated entities with greater flexibility to develop more efficient and less burdensome compliance procedures.

The Department has also undertaken an initiative to reform the style in which regulations are drafted. Too often, rules are poorly written, unclear, and difficult to understand. This causes confusion for the public and the agencies responsible for implementing the regulations. To remedy this problem, the Department is encouraging the use of “plain English” in rulemakings. A number of seminars have been held on this rule-drafting technique, and projects are underway.

***Encouraging Public Participation and Involvement in the Regulatory Process***

One of the goals of Executive Order 12866 is to ensure that the public has full and adequate opportunities to participate in the development of regulations. Encouraging increased public participation in the regulatory process so as to make regulatory policies more responsive to our customers' needs is a priority under this Administration. The Department is reaching out to communities and seeking their input on a variety of regulatory issues. For example, every year the Fish and Wildlife Service (FWS) establishes migratory bird hunting seasons. The FWS develops the

annual migratory bird hunting seasons in partnership with "flyway councils," which are made up of State fish and wildlife agencies. As the process evolves each year, FWS holds a series of public meetings to afford other interested parties, including hunters and other special interest groups, adequate opportunity to participate in the establishment of the upcoming seasons' regulations.

DOI is also encouraging the use of negotiated rulemaking to develop rules with the full participation of affected communities. Several bureaus are currently either employing negotiated rulemaking techniques or are exploring whether negotiated rulemaking is appropriate and feasible for particular rules.

Finally, Departmental policies are designed to delegate decisionmaking, including development and operation of DOI's regulatory programs, to the lowest appropriate level. With decentralization, management procedures can be developed that are sensitive to the various local needs and interests affected by DOI programs.

#### Bureaus and Offices Within DOI

The following are brief descriptions of the regulatory functions of DOI's major regulatory bureaus and offices.

##### *Office of the Secretary, Office of Environmental Policy and Compliance*

The regulatory functions of the Office of Environmental Policy and Compliance (OEPC) stem from requirements under section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Section 301(c) requires the development of natural resource damage assessment rules and the biennial review and revision, as appropriate, of these rules. Rules have been promulgated for the optional use of natural resource trustees to assess compensation for damages to natural resources caused by oil or hazardous substances. OEPC is overseeing the study and possible promulgation of additional rules pursuant to section 301(c)(2) and the review and possible revision of the existing rules in compliance with section 301(c)(3).

In undertaking DOI's responsibilities under section 301(c), OEPC is striving to meet three regulatory objectives: (a) that the minimal amount of regulation necessary be developed; (b) that the assessment process provide for tailoring to specific discharges or releases; and (c) that the process not be considered

punitive, but rather a system to achieve fair and just compensation for injuries sustained.

##### *Bureau of Indian Affairs*

The philosophy of the Bureau of Indian Affairs (BIA) is to encourage the development and management of human and other resources among American Indians and Alaska Natives, to encourage tribal assumption of BIA programs, and to fulfill trust and other responsibilities of the U.S. Government. BIA regulatory actions serve to balance its dual role as: (a) advocate in assisting tribes and encouraging their participation in BIA programs, and (b) trustee protecting and/or enhancing American Indian trust resources.

Important BIA programs are promulgated through regulations, rather than informal guidelines, so that American Indians are aware of, and have an opportunity to participate in, the development of standards and procedures affecting them. BIA regulatory policies seek to accomplish the following: (a) ensure consistent policies throughout American Indian Country; (b) promote American Indian involvement in the operation, management, planning, and evaluation of BIA programs and services; (c) provide guidance to applicants for BIA services; and (d) govern the development of American Indian lands and provide for the protection of American Indian treaty and statutory rights.

BIA's regulatory program is designed (a) to promote American Indian self-determination, (b) to provide American Indians and Alaska Natives with high-quality education and tribal development opportunities, (c) to meet BIA's trust responsibilities, and (d) to meet the needs of tribes and their members.

##### *Bureau of Land Management*

The Bureau of Land Management (BLM) is responsible for the development, management, and protection of public land resources that traditionally have been subject to multiple use. The principal authorities for the BLM's activities are the Federal Land Policy and Management Act of 1976, the Mineral Leasing Act of 1920, the Taylor Grazing Act of 1934, the Mining Law of 1872, the Wild and Free-Roaming Horse and Burro Act, and the Recreation and Public Purposes Act. BLM's programs cover three main program areas: energy and minerals, renewable resources, and lands, including conducting Federal land

surveys and maintaining the official records for all Federal and former Federal lands and minerals.

BLM's fundamental regulatory philosophy is that public resources should be managed responsibly, providing maximum benefits to the public, while conserving scarce resources for future generations. BLM's regulatory program is designed to ensure that:

- The resources in the Nation's lands are effectively and efficiently managed in accordance with law;
- The public's concern for the resources will be reflected in significant opportunity for participation in the development of rules;
- The regulatory compliance burden on individuals, firms, and other affected entities is kept to a minimum; and
- Individuals and firms operating under BLM regulations are given the opportunity to respond to, and make decisions based upon, assessments of market situations.

##### *Minerals Management Service*

The Minerals Management Service (MMS) has two major responsibilities: (a) timely and accurate collection, distribution, accounting for, and auditing of revenues owed by holders of Federal onshore, offshore, and tribal land mineral leases in a manner that meets or exceeds Federal financial integrity requirements and recipient expectations; and (b) management of the resources of the Outer Continental Shelf (OCS) in a manner that provides for safety, protection of the environment, and conservation of natural resources. These responsibilities are carried out under the provisions of the Federal Oil and Gas Royalty Management Act, the Minerals Leasing Act, the Outer Continental Shelf Lands Act, the Indian Mineral Leasing Act, and other related statutes.

The regulatory philosophy of MMS is to develop clear, enforceable rules that support the missions of each program. MMS will continue periodic reviews of offshore regulations to identify changes needed as a result of changes in technology, operating practices, or other factors. Specific revisions to rules to be pursued include ensuring the ability of lessee to meet end-of-lease obligations, its authority under the Oil Pollution Act of 1990 to require spill response plans in State and Federal waters, and developing regulations for certification of financial responsibility for offshore facilities. MMS also plans to continue its review and revision of existing regulations and to issue rules to refine

the royalty management regulations in chapter II of 30 CFR.

#### *Office of Surface Mining Reclamation and Enforcement*

The Office of Surface Mining Reclamation and Enforcement (OSM) was created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to "strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy."

The principal regulatory provisions contained in Title V of SMCRA set minimum requirements for obtaining a permit for surface coal mining operations, set standards for surface coal mining operations, require land reclamation once mining ends, and require rules and enforcement procedures to ensure that the standards are met. Under SMCRA, OSM serves as the primary enforcer of SMCRA until the States achieve "primacy," that is, until they demonstrate that their regulatory program meets all the specifications in SMCRA and has regulations consistent with those issued by OSM.

A primacy State takes over the permitting, inspection, and enforcement activities of the Federal Government. OSM then changes its role from regulating mining activities directly to overseeing and evaluating State programs. Today, 24 of the 27 key coal-producing States have primacy. In return for assuming primacy, States are entitled to regulatory grants and to grants for reclaiming abandoned mine lands. In addition, under cooperative agreements, some primacy States have agreed to regulate mining on Federal lands within their borders. Thus, OSM regulates mining directly only in nonprimacy States, on Federal lands in States where no cooperative agreements are in effect, and on American Indian lands.

SMCRA charges OSM with the responsibility of publishing rules as necessary to carry out the purposes of the Act. The most fundamental mechanism for ensuring that the purposes of SMCRA are achieved is the basic policy and guidance established through OSM's permanent regulatory program and related rulemakings. Its regulatory framework is developed, reviewed, and applied according to policy directives and legal requirements.

Litigation by the coal industry and environmental groups is responsible for some of the rules now being considered

by OSM. Others are the result of efforts by OSM to address areas of concern that have arisen during the course of implementing OSM's regulatory program.

OSM has sought to develop an economical, safe, and environmentally sound program for the surface mining of coal by providing a stable regulatory framework. To achieve stability, OSM has endeavored to create a regulatory program that provides a high degree of continuity in its requirements and creates minimal uncertainty concerning the nature and pace of changes to existing provisions.

OSM also has worked to create a consistent regulatory framework. At the same time, however, OSM has recognized the need (a) to respond to local conditions; (b) to provide flexibility to react to technological change; (c) to be sensitive to geographic diversity; and (d) to eliminate burdensome recordkeeping and reporting requirements that over time have proved unnecessary to ensure an effective regulatory program.

Major regulatory objectives regarding the mining of surface coal include:

- Continuing outreach activities with interested groups during the rulemaking process to increase the quality of the rulemaking process, improve the substance of the rules, and, to the greatest extent possible, reflect consensus on regulatory issues;
- Minimizing the recordkeeping and regulatory compliance burden imposed on the public by means of a review and, where advisable, revision of unnecessary and burdensome regulatory requirements; and
- Publishing final rules to implement the Energy Policy Act of 1992, Public Law 102-486.

#### *U.S. Fish and Wildlife Service*

The U.S. Fish and Wildlife Service has three basic mission objectives:

- To assist in the development and application of an environmental stewardship ethic based on ecological principles and scientific knowledge of fish and wildlife;
- To guide the conservation, development, and management of the Nation's fish and wildlife resources; and
- To administer a national program to provide the public with opportunities to understand, appreciate, and wisely use fish and wildlife resources.

These objectives are met through the following regulatory programs:

- Management of Service lands, primarily national wildlife refuges;

- Management of migratory bird resources;
- Conservation of certain marine mammals and endangered species;
- Allowance of certain activities that would otherwise be prohibited by law; and
- Administration of grant and assistance programs.

The Service maintains a comprehensive set of regulations in the first category—those that govern public access, use, and recreation on national wildlife refuges and in national fish hatcheries. As required by law, the Service is authorized to allow such uses only if they are compatible with the purpose for which each area was established. These regulations will be as consistent with State and local laws as practicable and will afford the public as much economic and recreational opportunity as possible. Consistent with the purposes for which those areas are established, with very few exceptions, the Service provides these types of opportunities on each of the more than 500 refuges and hatcheries. These regulations are developed and continually reviewed for improvements, with a substantial amount of public input, and are typically of limited geographical interest.

Management of migratory bird resources, covered by the second category of regulations, entails fulfilling U.S. obligations contained in various international treaties. This regulatory program entails an annual issuance on migratory bird hunting seasons and bag limits, developed in partnership with the States, American Indian tribal governments, and the Canadian Wildlife Service. Although these rules are issued annually, this regulatory program has been in existence for more than 50 years and has not significantly changed over that period of time. The regulations are necessary to permit migratory bird hunting that would otherwise be prohibited. Although recent declines in waterfowl populations have reduced the numbers of such birds that may be harvested, the regulations generally do not change significantly from one year to another.

The third category includes regulations to fulfill the statutory obligation to identify and conserve species faced with extinction. The basis for determining endangered species is limited by law to biological considerations, although priorities for allocating Service resources are established consistent with the President's policies (by directing the Service's efforts to species most

threatened and those whose protection is of the most benefit to the natural resource). Also included in this program are regulations to enhance the conservation of listed species and of marine mammals for which DOI has management responsibility. This program also contains regulations that provide guidance to other Federal agencies to assist them in complying with section 7 of the Endangered Species Act, which requires them not to conduct activities that would jeopardize the existence of endangered species.

When a species is listed as endangered or threatened, the Service may designate critical habitat to promote the recovery of the species. Under section 7 of the Endangered Species Act, critical habitat designation limits activities carried out, funded, or authorized by Federal agencies within the critical habitat zone. In designating critical habitat, the Service considers biological information and economic and other impacts of the designation. Areas may be excluded from the designation where the benefits of exclusion outweigh the benefits of inclusion, provided that the exclusion will not result in the extinction of the species. For 1995, the Service is developing a number of proposed and final critical habitat rules, including: marbled murrelet (final); delta smelt (final); Alabama sturgeon (final); Louisiana black bear (final); Rio Grande silvery minnow (final); Arizona willow (final); two Klamath River fishes (proposed); Mexican spotted owl (proposed); and pecos pupfish (proposed).

The fourth category—the Service's regulatory program that permits activities otherwise prohibited by law—entails regulating possession, sale or trade, scientific research, and educational activities involving fish and wildlife and their parts or products. Generally, these regulations are supplemental to State protective regulations, and cover activities that involve interstate or foreign commerce, which must comply with various laws and international obligations. The Service is continually working with foreign and State governments, the industry and individuals affected, and other interested parties to minimize the burdens associated with Service-related activities. The easing of such burdens through regulatory actions continues to balance the benefits that may be made available with the necessity to ensure adequate protection to the natural resource. Most of the regulatory activities are permissive in nature, and

the concerns of the public generally center on technical issues.

The last category—the Service's assistance programs—includes a limited number of regulations necessary to ensure that assistance recipients comply with applicable laws and Office of Management and Budget (OMB) Circulars. Regulations in this program help the affected parties to obtain assistance and to comply with requirements imposed by Congress and OMB.

#### *Bureau of Reclamation*

In recent years the Bureau of Reclamation's mission and goals have substantially changed. Its new mission is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To accomplish this mission, Reclamation applies management, engineering, and scientific skills that result in effective and environmentally sensitive solutions.

Reclamation projects provide for some or all of the following concurrent purposes: irrigation water service, municipal and industrial water supply, hydroelectric power generation, water quality improvement, groundwater management, fish and wildlife enhancement, outdoor recreation, flood control, navigation, river regulation and control, system optimization, and related uses.

The bureau's regulatory program is designed to ensure that its mission is carried out expeditiously and efficiently.

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#### **DOI—Assistant Secretary for Policy, Management and Budget (ASPMB)**

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#### **FINAL RULE STAGE**

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#### **58. NATURAL RESOURCE DAMAGE ASSESSMENTS; TYPE A—GREAT LAKES ENVIRONMENTS**

##### **Priority:**

Other Significant

##### **Legal Authority:**

42 USC 9651(c) CERCLA

##### **CFR Citation:**

43 CFR 11

##### **Legal Deadline:**

NPRM, Judicial, August 8, 1994. Final, Judicial, January 18, 1996.

#### Settlement agreement

##### **Abstract:**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Clean Water Act allow natural resource trustees to bring a claim against a potentially responsible party for resources that have been injured by a release of a hazardous substance or a discharge of oil. CERCLA calls for the promulgation of two types of natural resource damage assessment regulations: simplified "type A" assessment procedures involving minimal fieldwork, and "type B" procedures calling for more detailed, site-specific assessments. CERCLA requires that the regulations be reviewed, and revised as appropriate, every 2 years.

The Department has issued regulations establishing an administrative process for assessing damages, a type A procedure for determining injury and damages from minor spills in coastal and marine environments, and site-specific type B procedures for determining injury and damages when the type A procedure is not applicable.

In 1989 the Department began the biennial review of the type A procedure for coastal and marine environments. Subsequently, the court in *State of Colorado vs. United States Department of the Interior*, 880 F.2d 481 (DC Cir 1989), ordered the Department to revise the type A procedure to incorporate restoration costs as well as lost economic values. The type A procedure for coastal and marine environments incorporates a computer model capable of calculating damages based on a small number of user-supplied data inputs. The Department is revising the computer model to comply with the court remand as well as with the biennial review requirement.

The Department is developing a new type A procedure for use in the Great Lakes. This procedure, like the type A procedure for coastal and marine environments, incorporates a computer model capable of calculating damages based on a small number of user-supplied data inputs. Both type A computer models have been subjected to extensive analysis and testing, which has resulted in multiple revisions and refinements.

##### **Statement of Need:**

These regulations are required by statute and judicial decree. With regard to the type A procedures, use of the site-specific type B procedures to assess damages from minor releases or

discharges is usually not cost-effective. Therefore the revised type A procedure for coastal and marine environments and the new type A procedure for Great Lakes environments are needed to enable trustees to obtain funds to restore injured resources.

#### Summary of the Legal Basis:

These regulations are required by CERCLA, 42 USC 9651(c).

#### Alternatives:

Two alternatives were considered. Alternative 1 was to take no action. Alternative 2 was to develop a type A procedure for minor releases and discharges in the Great Lakes that utilizes a computer model capable of calculating damages based on a small number of user-supplied data inputs.

#### Anticipated Costs and Benefits:

The natural resource damage assessment regulations do not themselves authorize the assessment and recovery of damages; they simply provide guidance on how to perform assessments. Costs include the costs of preparing the regulation, the costs of developing a computer model, and the cost of performing an assessment using the regulation. Without a simplified type A procedure, it is unlikely that natural resource trustees would attempt to recover damages for the minor releases or discharges that occur frequently in the Great Lakes.

Therefore, under Alternative 1 there would be no assessment costs. Under Alternative 2, assessment costs would consist solely of the expenses associated with developing model input data and applying the model.

Benefits consist of increased damage recoveries available for restoration of injured resources. The estimate under Alternative 1 assumes that no damages would be recovered because no assessments would be performed.

Alternative 1 would yield a net benefit of \$14,294,000; Alternative 2 a net benefit of \$14,294,000.

#### Risks:

Without appropriate standards to promote the reliability of lost nonuse value estimates, the public may not in some cases be able to obtain full compensation for its losses, and in other cases polluters may be assessed damages in excess of actual public losses. Without the biennial review, trustees may be left without the best available assessment procedures, which could prevent trustees from recovering adequate funds to restore injured

resources and result in excessive damage assessment costs. Without the new type A procedures, trustees are unlikely to seek compensation for injuries from minor discharges and releases in Great Lakes environments, which would leave injured resources unrestored and prevent polluters from adequately internalizing costs.

#### Timetable:

Action	Date	FR Cite
ANPRM	09/22/89	54 FR 39015
ANPRM Comment Period End	10/23/89	
NPRM	08/08/94	59 FR 40319
NPRM Comment Period End	07/06/95	60 FR 7155
Final Action	01/00/96	
Final Action	01/00/96	

#### Coastal and Marine Environments (RIN 1090-AA23)

ANPRM 09/22/89 (54 FR 39015)  
ANPRM Comment Period End 10/23/89  
NPRM 12/08/94 (59 FR 63300)  
NPRM Comment Period End 07/06/95 (60 FR 7155)  
Final Action 01/00/96

#### Great Lakes (RIN 1090-AA21)

ANPRM 09/22/89 (54 FR 39015)  
ANPRM Comment Period End 10/23/89  
NPRM 08/08/94 (59 FR 40319)  
NPRM Comment Period End 07/06/95 (60 FR 7155)

#### Small Entities Affected:

None

#### Government Levels Affected:

None

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RIN: 1090-AA21

#### DOI—ASPMB

### 59. NATURAL RESOURCE DAMAGE ASSESSMENTS; TYPE A—COASTAL AND MARINE ENVIRONMENTS

#### Priority:

Other Significant

#### Legal Authority:

42 USC 9651(c) CERCLA

#### CFR Citation:

43 CFR 11

#### Legal Deadline:

NPRM, Judicial, December 8, 1994.  
Final, Judicial, January 18, 1996.

Settlement agreement

#### Abstract:

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Clean Water Act allow natural resource trustees to bring a claim against a potentially responsible party for resources that have been injured by a release of a hazardous substance or a discharge of oil. CERCLA calls for the promulgation of simplified "type A" assessment procedures involving minimal fieldwork for use in cases of minor releases or discharges. In 1987, the Department issued a type A procedure for coastal and marine environments that incorporated a computer model capable of calculating damages based on a small number of user-supplied data inputs. CERCLA requires that assessment procedures be reviewed, and revised as appropriate, every two years. In 1989, the Department began the biennial review of the type A procedure for coastal and marine environments. Subsequently, *State of Colorado v. United States Department of the Interior*, 880 F.2d 481 (D.C. Cir. 1989), ordered the Department to revise the type A computer model to incorporate restoration costs as well as lost economic values.

#### Statement of Need:

These regulations are required by statute and judicial decree. Also, use of site-specific type B procedures to assess damages from minor releases or discharges is usually not cost effective. Therefore, the revised type A procedure for coastal and marine environments is needed to enable trustees to obtain funds to restore injured resources.

#### Summary of the Legal Basis:

These regulations are required by CERCLA, 42 USC 9651(c).

#### Alternatives:

Two alternatives were considered. Alternative 1 was to take no action, which would leave trustees with a type A procedure that calculates only lost economic values. Alternative 2 was to revise the type A procedure in compliance with the statutory biennial review requirement and the court remand to produce a computer model that calculates lost economic values as well as restoration costs.

**Anticipated Costs and Benefits:**

The natural resource damage assessment regulations do not themselves authorize the assessment and recovery of damages; they simply provide guidance on how to perform assessments. Costs include the costs of revising the computer model and the cost of performing assessments using the regulation. Benefits consist of increased damage recoveries available for the restoration of injured resources. Under Alternative 1, trustees would obtain damages only for lost economic values. Under Alternative 2, trustees would obtain damages for lost economic values as well as restoration costs. Alternative 1 would yield a net benefit of \$14,212,000. Alternative 2 would yield a net benefit of \$56,955,000.

**Risks:**

Without the revised type A procedures, trustees are unlikely to seek compensation for injuries from minor discharges and releases in coastal and marine environments, which would leave injured resources unrestored and prevent polluters from adequately internalizing costs.

**Timetable:**

Action	Date	FR Cite
ANPRM	09/22/89	54 FR 39015
ANPRM Comment Period End	10/23/89	54 FR 39015
NPRM	12/08/94	59 FR 63300
NPRM Comment Period End	07/07/95	60 FR 7155
Final Action	01/18/96	

**Small Entities Affected:**

None

**Government Levels Affected:**

None

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**RIN:** 1090-AA23

**DOI—Bureau of Indian Affairs (BIA)**

**PROPOSED RULE STAGE**

**60. TRIBAL SELF-GOVERNANCE**

**Priority:**

Other Significant

**Legal Authority:**

PL 103-413

**CFR Citation:**

25 CFR 1000

**Legal Deadline:**

None

**Abstract:**

This rule will clarify how the Department and tribes will carry out their respective responsibilities under the Tribal Self-Governance Act of 1994. At the request of a majority of Indian tribes with self-governance agreements, the Secretary has established a negotiated rulemaking committee to negotiate and promulgate such regulations as are necessary to carry out the Act.

**Statement of Need:**

The Department of the Interior (DOI) needs to clarify how it and the tribes will carry out their respective responsibilities under the Tribal Self-Governance Act of 1994. Provisions are needed to clarify or establish:

- Procedures for conducting negotiations, defining stable base budgets, time lines for the transfer of funds for tribes, and the amount of residual funds to be retained;
- The processes for accepting new tribes into the self-governance program planning and negotiation process, for awarding planning and negotiation grants, for approving waiver requests, and for determining and negotiating tribal shares of BIA and eligible non-BIA programs;
- Mechanisms for reviewing tribal trust functions;
- Retrocession procedures;
- Procedures for ensuring that proper health and safety standards exist in construction projects and are included in annual funding agreements;
- Reporting requirements of tribes and DOI; and
- A mechanism for negotiating the inclusion of specific provisions of Federal procurement regulations into annual funding agreements.

DOI expects that the rulemaking process will identify other components of the program that require clarification.

**Summary of the Legal Basis:**

The Tribal Self-Governance Act of 1994 requires DOI, upon request of a majority of self-governance tribes, to negotiate and promulgate regulations to carry out the tribal self-governance program. The Act calls for a negotiated rulemaking committee under 5 USC 565, composed of Federal and tribal representatives, with a majority of the tribal representatives from self-governance tribes. The Act also authorizes DOI to adapt negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and the Indian tribes. On November 1, 1994, a majority of self-governance tribes wrote the Secretary requesting the immediate initiation of negotiated rulemaking.

**Alternatives:**

There is a range of alternatives for each of the program components, from maintaining discretion and flexibility at the local level to standardizing requirements and procedures on the national level.

**Anticipated Costs and Benefits:**

The rule is expected to promote greater efficiency of Federal and tribal government operations. It is also expected to reduce opportunity costs resulting from untimely Federal actions. The rule will improve the ability of Federal and tribal governments to plan their self-governance activities. This should lead to greater stability of operations. Clarifying procedures for conducting operations will improve the ability of governments to plan for the time and cost of conducting negotiations. Clarifying time lines for transfer of base funding and other funds to tribes will improve planning and reduce the opportunity costs resulting from the untimely transfer of funds under the self-governance program. Budget and operation planning will be improved by specifying the process for accepting additional tribes into the self-governance program planning and negotiating process as well as the process for awarding planning and negotiation grants. Since retrocession procedures will be specified, governments will be better able to plan for retrocessions. Standardization of tribal shares will allow the self-governance program to comply with

statutory requirements not to limit or, reduce the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive.

**Risks:**

By removing uncertainty and promoting a more stable framework for the program, the rule will greatly lower the risk of not achieving the stated goals of tribal self-governance. It will change the role of Federal agencies that serve tribes by shifting their responsibilities from day-to-day management of tribal affairs to those concerned with protecting and advocating tribal interests.

**Timetable:**

Action	Date	FR Cite
Notice of Intent to Establish a Negotiated Rulemaking Committee	02/15/95	60 FR 8806
NPRM	03/01/96	

**Small Entities Affected:**

Governmental Jurisdictions

**Government Levels Affected:**

Tribal, Federal

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**RIN:** 1076-AD20

**DOI—BIA**

**61. INDIAN SELF-DETERMINATION ACT AMENDMENTS OF 1994**

**Priority:**

Other Significant

**Reinventing Government:**

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

**Legal Authority:**

25 USC 450; 25 USC 5911; 25 USC 1396; 25 USC 450 (PL 103-413)

**CFR Citation:**

25 CFR 900; 25 CFR 272; 25 CFR 274; 25 CFR 275; 25 CFR 277; 25 CFR 278

**Legal Deadline:**

Final, Statutory, April 25, 1995.

Negotiations for new regulations must be completed within 90 days of the Act's effective date unless the Secretary obtains written approval of an extension.

**Abstract:**

The Indian Self-Determination Contract Reform Act of 1994 (Public Law 103-413) significantly amends numerous provisions of the Indian Self-Determination and Education Assistance Act of 1975 (25 USC 450). Its purpose is to limit the promulgation of regulations under 25 USC 450 and to specify the terms of self-determination contracts entered into between the United States and Indian tribal organizations. The Act adds a new definition of the term "construction contract," excludes tribes or tribal organizations from the provisions of the Davis-Bacon Act, and recognizes the applicability of tribal employment and contract preference laws to contracts benefitting a single tribe. The latter provision in effect permits the application of tribal ordinances providing preference in employment to tribal members or other individuals. The Act also amends substantially the scope of contractable programs and the grounds for declination.

**Statement of Need:**

As a result of the passage of the Indian Self-Determination Contract Reform Act Amendments of 1994, the Department of the Interior (DOI) must revise the regulations governing how DOI, the Department of Health and Human Services (HHS) and the tribes will carry out their respective responsibilities. The Amendments significantly revise numerous provisions of the Indian Self-Determination and Education Assistance Act of 1975 (ISDEA). The overall purpose of Title I of ISDEA is to limit the promulgation of regulations and to specify the terms of self-determination contracts entered into between the United States and Indian tribes. Title I also makes contracting less burdensome for the tribes.

**Summary of the Legal Basis:**

The Indian Self-Determination Act of 1994 requires DOI to negotiate and promulgate regulations necessary to carry out the tribal Indian Self-Determination Program. The Act calls for DOI to establish a negotiated rulemaking committee composed of Federal and tribal representatives. It also authorizes the DOI to adapt negotiated rulemaking procedures to the unique context of self-

determination and the government-to-government relationship between the United States and the Indian tribes.

During the week of April 13, 1995, DOI, HHS and tribal representatives held their first session in Arlington, Virginia, and formed the Indian Self-Determination Negotiated Rulemaking Committee. The Committee developed and approved the formal organizational protocols and preamble.

**Alternatives:**

The alternative to be considered is that of not issuing regulations or procedures and following the actual Indian Self-Determination Act, as amended in 1994.

**Anticipated Costs and Benefits:**

The rule is expected to promote greater efficiency of Federal and tribal government operations. The rule is also expected to reduce costs resulting from untimely Federal actions and transfer of funds to tribes. This reduction will reduce administrative costs for federal personnel and contracting tribes, allowing additional funds to provide services to the tribal clientele.

**Risks:**

If DOI, HHS, and tribal representatives are unable to reach an agreement on the proposed ISDEA regulations as amended, the Federal agencies and tribal representatives will be required to follow the amended Act without regulations and/or procedures. The deadline date for publication of the proposed regulations and the final rule cannot be extended without the approval of the tribes.

**Timetable:**

Action	Date	FR Cite
NPRM	10/31/95	
NPRM Comment Period End	04/30/96	

**Small Entities Affected:**

None

**Government Levels Affected:**

Tribal

**Procurement:**

This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

**Additional Information:**

A proposed rule for a new 25 CFR part 900 was published in the Federal Register on January 20, 1994. This rule is being removed from the agenda due to the new legislation. The regulation

now being proposed is a replacement  
for that regulation.

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