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Improving Government Regulations: A Guidebook for Conservation and Renewable Energy

R. J. Nesse
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April 1981

Prepared for the U.S. Department of Energy
under Contract DE-AC06-76RLO 1830

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IMPROVING GOVERNMENT REGULATIONS: A GUIDEBOOK FOR CONSERVATION AND RENEWABLE ENERGY

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Richland, Washington 99352

(a) The Synectics Group, Washington, D.C.

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PREFACE

This guidebook was prepared for the Office of Policy, Planning, and Evaluation (PPE) for the Assistant Secretary for Conservation and Solar Energy (CS) by the Pacific Northwest Laboratory (PNL) with assistance from The Synectics Group (TSG). With the reorganization of the Department of Energy, PPE now reports to the Assistant Secretary for Conservation and Renewable Energy.

Because federal policy making and regulatory procedures are being reformed, this Guidebook was written for easy revision and expansion when necessary. It is important to note that the Guidebook was written in response to President Carter's regulatory policies and does not account for President Reagon's Executive Order 12291 (February 19, 1981) which may make certain sections of the Guidebook outdated. If needed, the Guidebook can be easily updated to include the Reagon reforms.

This Guidebook is not intended to encourage regulations. Its purpose is to provide CS program office staff with guidance and assistance to problems encountered in developing actions, including regulations, taken to achieve CS policy objectives. The Guidebook describes the requirements for developing a regulation and information on how to satisfy those requirements. However, the fundamental goal of this Guidebook is to start you thinking about alternatives to regulations before you initiate the regulatory process, not when it is too late.

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CONTENTS

INTRODUCTION

This Guidebook was prepared for CS program office staff to reduce the confusion, consternation, and delays that hinder the CS policy making process. DOE administrative procedures for writing rules and regulations are explained in a simple step-by-step format, including procedural reforms mandated by President Carter's E.O. 12044. In addition, the role of analysis in the policy making process is explained, including how analysis can be used to select the most appropriate policy alternatives, how to do good analysis, what models and data bases are available, and when formal documents need to be prepared. In short, this Guidebook presents an integrated view of CS policy making encompassing both administrative procedures and policy analysis.

Because federal policy making and regulatory procedures are currently being reformed, this Guidebook was written as a "living-document", and is intended to be accessible for easy revision and expansion when necessary. The Guidebook was written in response to the Carter Administration's regulatory policies and does not account for President Reagan's Executive Order 12291 (February 19, 1981) which may make certain sections of this Guidebook outdated. The Guidebook can be easily updated to include the Reagan reforms if needed.

Goals of the Guidebook

- To encourage thoughtful analysis of regulations and alternatives
- To provide consistent guidance that will result in all CS staff members following the same procedures
- To describe, step by step, a streamlined and more responsive process for promulgating CS regulations
- To achieve a format that will simplify the revision of this Guidebook
- To present a framework so straightforward that steps can be anticipated and planned for, and most "unpleasant surprises" can be eliminated.

STRUCTURE OF THE GUIDEBOOK

The Guidebook is divided into six chapters, each of which is briefly described below. Although the information is rather neatly packaged into separate compartments, you must always be aware that in real life, all the steps are integrated components of the process train. We have treated certain aspects as separate issues only because they are extremely complex or relatively self-contained. Never forget that analysis, evaluation, and public participation all have diverse steps that must be planned for and tracked through the system.

Chapter One - Process Overview: If your experience in writing regulations at DOE has been negligible or puzzling, read this overview first. It serves as a sort of "Executive Summary" of regulatory procedures. Chapter One very briefly sketches each step in the development of a significant regulation, noting important requirements and participants. Numerous references to other parts of the Guidebook are presented throughout.

Chapter Two - Administrative Procedures: Planning and Execution: Chapter Two expands upon the Overview, providing the details of the process, the rationale and source of requirements, concurrence procedures, and advice on the timing and synchronization of steps. Large-scale requirements such as analyses, evaluations, and public participation are mentioned where appropriate, but further discussion is deferred to following chapters.

Chapter Three - Analysis Requirements For CS Actions: Chapter Three explains the types of analysis documents that may be required for your program. Regulatory Analyses, Environmental Impact Statements, Urban and Community Impact Analyses, and Regulatory Flexibility Analyses are all discussed. Specific information to be included in the documents and the circumstances under which the documents need to be prepared are explained.

Chapter Four - How To Do Good Analysis: Chapter Four is a step-by-step discussion of how to do good analysis. Use of models and data bases is discussed. Policy objectives, alternatives, and decision making are explained.

Chapter Five - Public Participation: Because there are now so many points at which the public has access to the regulatory process, an entire chapter has been devoted to the mechanisms supporting that interaction. Guidance is provided on identifying the public that would most likely be interested in your regulation, involving its constituents in dialogue with CS, evaluating and handling comments, and engineering the final response.

Chapter Six - The Evaluation Effort: The broad and pervasive topic of evaluation is also discussed separately. Chapter Six provides direction on planning the evaluation, monitoring the regulation's success once it has been promulgated, and allowing for constructive support or criticism from outside DOE.

A great deal of effort has gone into making these chapters as short, concise, and informative as possible. We hope that such a format will not only make the material more accessible, but will also make revision simpler, as certain sections can be modified or removed without impairing the usefulness of the others. With the same reasoning in mind, we have used offices and positions rather than specific names and telephone numbers of individuals, so that the Guidebook can more easily be kept up to date.

CHAPTER ONE
OVERVIEW TO THE CS REGULATORY PROCESS

This chapter is a general overview of how the regulatory process works within CS. The chapter is presented in three sections:

- Process and procedures
- CS Program Office Regulatory Checklist
- Key offices and their roles

Additional information on all of the essential steps for developing regulations in CS is provided in Chapter Two.

CS REGULATORY PROCESS AND PROCEDURES

The CS regulatory process involves a complex series of steps from problem identification through implementation and evaluation of a final rule. Although the checklist at the end of this chapter provides a detailed outline of all of the necessary steps in the process, the following areas deserve special emphasis:

1. Problem Identification
2. Alternatives to Rulemaking
3. Preplanning/Authorization
4. Analysis
5. Public Participation
6. Publication in the Federal Register
7. Evaluation

Problem Identification

Energy policy problems must be defined before they can be solved. The first area in the CS regulatory process (or in any policy making process) is to identify the problem that neads to be solved. Congress, the President, other government agencies, and the public are all involved to varying degrees in this step. In fact, most CS actions are initiated to solve problems identified by

Congress in various pieces of energy legislation. Problem identification issues are discussed further in Chapters Three and Four.

Alternatives to Rulemaking

After problem identification, the next area to investigate is alternative solutions. Should the federal government become involved? Can state and local governments or private markets solve the problem? These questions of federal mandate must be answered early in the regulatory process.

If the decision is made for CS to take action, alternative policies ranging from regulations to incentives/disincentives and information programs must be considered. Requirements for examining alternatives are explained in Chapter Three, how to analyze alternatives is in Chapter Four, and brief descriptions of alternative federal policies can be found in Appendix B.

If alternatives that require rulemaking are implemented, then the remaining four areas in the CS regulatory process are critical.

Preplanning/Authorization

Preplanning cannot be emphasized enough as the cornerstone for a successful rulemaking process. Chapter Two provides a list of questions to aid your preplanning efforts, as well as a discussion of common pitfalls which you can easily avoid. Your rule will undergo intense scrutiny by several people before final publication; therefore, preplanning should include initial contact with those people involved in concurrence, as well as an agreed-upon game plan for approach, style and format of the proposed rule. Authorization must be obtained via an authorization memorandum to the Secretary of DOE outlining an intended course of action. Once authorization is received, analysis and public participation efforts should be initiated.

Analysis

Although policy analysis begins when problem identification is under consideration, four specific analyses may be required as decision-making tools for you. Chapter Three provides detailed descriptions of a Regulatory Analysis (RA), an Environmental Impact Statement (EIS), Regulatory Flexibility Analysis (RFA), and an Urban and Community Impact Analysis (UCIA), as well as when each is used. It is important to determine early on which analyses may be required, and what plans are needed to complete them.

Public Participation

Input from the public is not only encouraged, it is required by law. A comprehensive public participation effort requires extensive planning and coordination, as well as an initial estimate of the type and volume of the expected

public response. See Chapter Four for a full description of public participation procedures, and several helpful hints which should simplify your tasks in the lead office.

Publication

After obtaining concurrence, solidification of any stage in the rulemaking process rests with publication in the Federal Register. Consult the Federal Register handbook of stylistic and contextual guidelines. Do not let the technical nature of the handbook dissuade you from using it in the organization and drafting of your proposed rules. Familiarity with Federal Register requirements will save you many hours of unnecessary revisions and rewrites.

Evaluation

Chapter Six discusses the importance of evaluation and outlines the objectives of an evaluation process. Also provided are four elements of a potential evaluation plan, designed to measure a regulatory program's success. You are encouraged to comment on and contribute to the ideas presented in this chapter.

The following is a checklist of steps in the CS regulatory process.

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CS PROGRAM OFFICE
REGULATORY CHECKLIST

- [ ] Maintain close contacts with GC, LA, the ACTS Office, and your Deputy Assistant Secretary, all of whom monitor new or amended legislation or executive orders pertaining to DOE programs. These ties are essential to the efficient and informed rulemaker.

- [ ] Assess ongoing CS programs; continually ask, "How will needs for any new controls be met?"

- [ ] As soon as an issue has been tagged for rulemaking, discuss likely effects on CS programs within your program office and go on to following steps if a rule is deemed your responsibility.

- [ ] Consider other alternatives to rulemaking (This is the rudimentary regulatory analysis.).

- [ ] Identify background materal (i.e., related legislation, etc.).

- [ ] Outline anticipated steps; milestones and final outcome, (very important!).

- [ ] Begin planning your public participation effort.

- [ ] Meet with all people involved in the rulemaking process to agree on goals, strategy and requirements.

- [ ] Consult the Federal Register Document Drafting Handbook to learn publication requirements for the Federal Register before drafting begins.

- [ ] Determine "significant" versus "non-significant" rules. If significant, determine which of the following analyses are necessary.
  - [ ] RA
  - [ ] RFA
  - [ ] EIS (necessitates EPA involvement)
  - [ ] UCIA

- [ ] Write Authorization Memo to the Secretary's office (This document, unless rejected, need be sent only once, to initiate the process).

- [ ] After authorization, submit a schedule to the ACTS system. The Director of ACTS will notify the Secretary's office of the proposed deadlines.

- [ ] Check with GC to determine when you can talk to whom under the exparte rules regarding specific issues. Make sure you find this out before any comment periods begin.

- [ ] Determine which offices will be involved in concurrence and verify list with the ACTS Director.
- [ ] Establish a schedule with the Office of Hearings and Dockets (see Chapter Four for details).
- [ ] Consult with the Director of the Federal Register (at least 10 working days before proposed submission of the document) regarding proposed schedule for publication.
- [ ] Compile a mailing list of interest groups, etc., to be included in public participation activities. Office of Consumer Affairs can supplement this list with its own.
- [ ] Begin analyses chosen (RA, EIS, UCIA).
- [ ] Draft NOI (optional step) if needed
  - [ ] Circulate for comments
    - [ ] Submit for publication
    - [ ] Get concurrence
    - [ ] Adjust to FR format
    - [ ] Action memo must cover materials
- [ ] NOI published (optional), order copies for public participation circulation.
- [ ] Begin planned public participation activities (usually a 30-day comment period).
- [ ] Assess comments and incorporate into next step.
- [ ] Draft ANOPR (optional step if needed)
  - [ ] Include analytical results of NOI, if any
    - [ ] Adjust to FR format
      - [ ] Circulate for comments
    - [ ] Get concurrence
      - [ ] Submit for publication
    - [ ] Action memo must cover materials.
- [ ] ANOPR published.
- [ ] Order additional copies for public participation.
- [ ] Initiate planned public participation steps (60-day comment period).
- [ ] Assess comments and integrate into next step.

☐ Draft NOPR (required step) → ☐ Include analytical results of NOI and/or ANOPR, if any

☐ Get concurrence ← ☐ Adjust to FR format ← ☐ Circulate for comments

☐ Action memo must cover

☐ Submit for publication.

☐ NOPR published.

☐ Order additional copies for public participation.

☐ Initiate planned public participation steps through Office of Hearings and Dockets (60-day comment period).

☐ Assess comments and integrate into final rule draft.

☐ Draft final rule (required step) ☐ Circulate for comments

☐ Submit for publication ☐ Get concurrence ☐ Adjust to FR format

☐ Send Action Memo

☐ Publish final rule.

☐ Order additional copies.

☐ Circulate final rule to interested parties (optional, but advisable and politically expedient).

☐ Thank you's where necessary, or appropriate.

BREATHE A SIGH OF RELIEF!

KEY OFFICES AND THEIR ROLES

Figure 1.1 and the list of offices and roles that follow briefly describes the range of actions in the CS regulatory process. Offices and their roles in the process are subject to rapid change, so it is helpful to keep abreast of changes in organization and function.

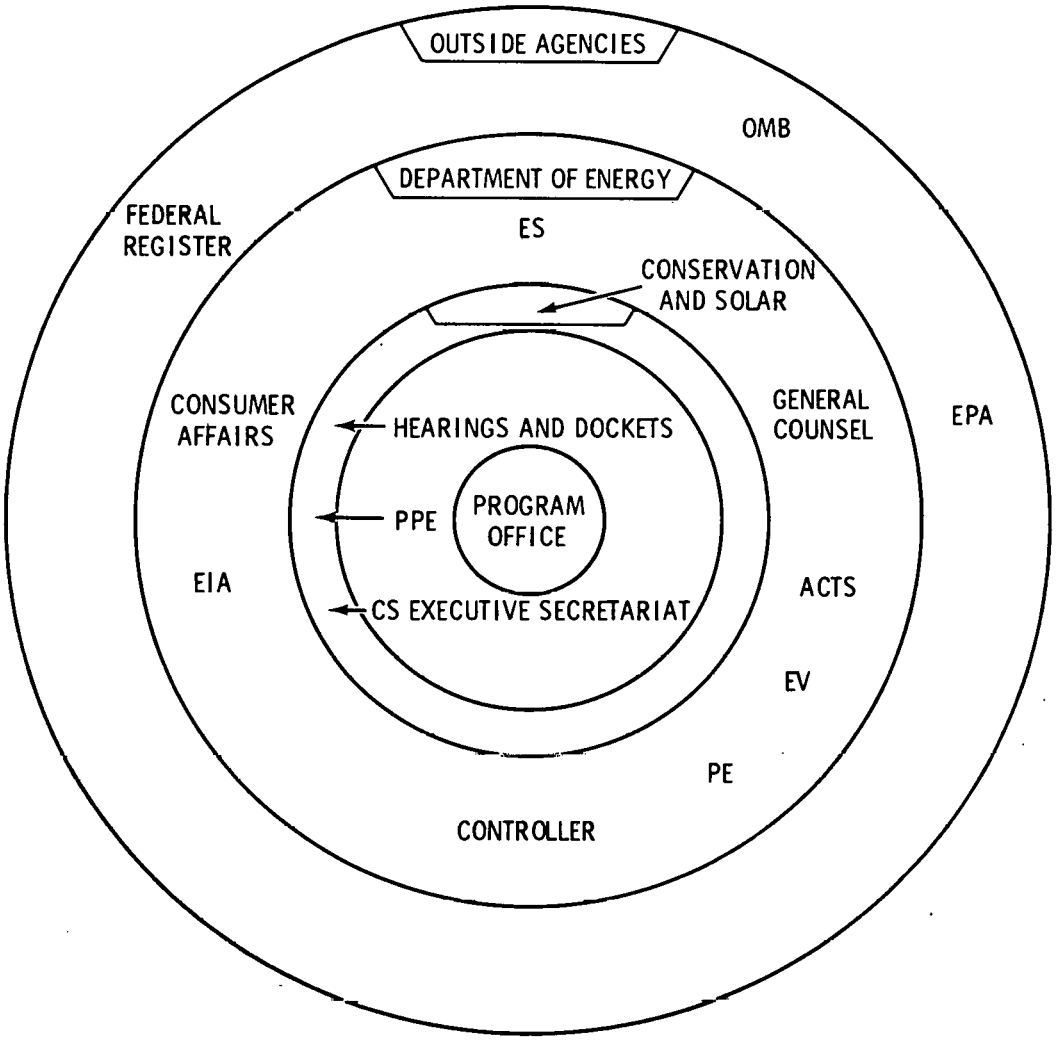

FIGURE 1.1 Conservation and Solar, Department of Energy, Outside Offices Related to the Rulemaking Process

CS Offices

1. **Lead CS Program Office (Lead Office)**
   - Takes lead responsibility for developing the regulation

- Prepares Authorization Memo (proposed)
- Prepares Analysis Plan
- Conducts or manages the performance of relevant analyses (EA/EIS, RA, UCIA, RFA)
- Coordinates information flows among groups within DOE and outside DOE who are involved in the action
- Elicits and evaluates public comments
- Monitors and evaluates the regulation once it is in place

2. **CS Office of Policy, Planning and Evaluation (PPE)**
   - Reviews Action/Authorization Memo
   - Reviews Analysis Plan (proposed)
   - Coordinates preparation of CS submissions to Regulatory Calendar and Regulatory Agenda
   - EV Coordination
   - Assists in developing standard assumptions (i.e., prices, discount rates, etc.)
   - Provides guidance to CS Program Offices on CS regulatory policy
3. **Office of Hearing and Dockets (HD)**
   - Prepares for hearings
   - Maintains dockets
4. **CS Executive Secretariat (XS)**
   - Coordinates ACTS
   - Administers schedules

DOE Offices

5. **Office of General Counsel (GC)**
   - Assists lead office to prepare ANOPR, NOPR, and final rule
   - Assists in determining when rulemaking is necessary
   - Determines the legality of the rules and regulations

- Reviews Authorization Memo

6. **Office of Policy and Evaluation (PE)**
   - Reviews Action/Authorization Memo
   - Coordinates DOE policy issues with respect to the regulation
   - Assists in determining a regulation's required documentation
7. **Energy Administration Agency (EIA)**
   - Provides data for Regulatory Analysis
   - Reviews and approves data collection requests
8. **Office of Environment (EV)**
   - Reviews NEPA compliance
   - Reviews Analysis Plan
   - Reviews EA or EIS

External Agencies

9. **Environmental Protection Agency (EPA)**
   - Reviews EA, if necessary
   - Determines NEPA document requirements
   - Conducts EIS
10. **Office of Management and Budget (OMB)**
   - Oversees Executive Order 12044 compliance
   - Approves forms; for example, questionnaires going to the public
11. **Regulatory Analysis Review Group (RARG)**
   - Reviews selected Regulatory Analyses
   - Prepares Regulatory Calendar and Regulatory Agenda

CHAPTER TWO
ADMINISTRATIVE PROCEDURES: PLANNING AND EXECUTION

PREPLANNING

Preplanning is the key to the entire rulemaking process. Your rule will be scrutinized by several people within DOE as it develops; for example, every regulation must be assessed by GC for legality, and PE is almost always included to monitor the policy ramifications. Thus, it makes sense to meet representatives of affected offices at the very beginning to discuss the purpose, goals and strategy of the proposed rule. At the same time, it is a good idea to agree on a format and to become familiar with the Federal Register requirements for publication (not exciting, but necessary).

Staff in the lead office can save a great deal of time and frustration by first thinking about the following questions:

- Why is this rule needed?
- Who do you intend to regulate? Which federal agencies, industries, and individuals will be affected?
- Is this going to be a complex and major rule?
- Is this anticipated to be a controversial rule?
- Does this rule require an RA, EIS, EA, or UCIA?
- If so, who do you need to contact to have them done?
- Who else needs to be included and at what stages in the process? (Refer to checklist at the end of the previous chapter.)
- How long will each step take in the rulemaking process?
- What legislative measures pertain to the rule?
- What other related documents are available pertaining to the issue?
- Who do you want to solicit for comments before publishing the final rule?
- What procedures will you follow for public participation and where will they be scheduled (see Chapter Five)?

- What other groups need to be informed about the intended effects of the rule?

The specifics under each point are likely to change, but if you have outlined projected tasks, resources and deadlines ahead of time, your job as a rulemaker will be greatly simplified. Preplanning cannot be emphasized enough as the best tool for you to ensure thorough and efficient rulemaking.

PITFALLS

The following list includes several of the most common pitfalls that plague rulemakers. Be alert to them early on in your planning process. Lack of preplanning often results in unnecessary delays and confusion.

- Underestimation of time projections, which results in missed ACTS schedule deadlines and delayed publication
- Failure to agree on the basic structure and format of the rule by individuals involved in the concurrence chain at the onset of rulemaking, resulting in confusing and contradictory review standards
- Failure to find out early on, who must be consulted and when during each stage of rulemaking and concurrence, causing embarrassing delays and missed contacts
- Lack of preplanning for the public participation effort (identifying and involving the public: see Chapter Five for detailed suggestions and guidelines.)
- Refusal to learn about and conform to Federal Register requirements, which causes frustrating (and often lengthy) delays at the time of publication
- Hesitation to consult GC until the final stages of the process; legal counsel is vital early on in the process to help avoid massive changes at the end
- Unfamiliarity with ex parte rules, which may make the regulation unnecessarily susceptible to litigation.

ACTION INITIATION

How and why does the rulemaking process begin? The majority of regulatory activity develops in response to legislative actions or executive orders (i.e., Presidential mandates). Agencies can also attempt to precipitate governmental action by recommending and presenting ideas to the President or members of Congress. Organized lobbying efforts provide an additional avenue for initiating action, and depend largely on the political forces at work.

Your office is likely to first learn about the potential need for rulemaking (and your designation as "lead office") from your Deputy Assistant Secretary, the Office of Legislative Affairs (which monitors legislation), or GC. Rulemaking information may also come from contacts your office may have on the Hill. Your office is then responsible for examining the issues internally, particularly to determine who (and how severely) the measures are likely to impact.

AUTHORIZATION MEMORANDUM

Before the lead office can proceed with initial rulemaking steps, an Authorization Memorandum must be composed, outlining the entire plan and intent of a proposed rule, as well as when, how, and with what resources it will be developed. It must also include other alternatives considered and reasons for rejecting them. An Authorization memorandum is written in the same format as is an Action Memorandum (described below), and is sent to the Secretary of Energy at the very beginning of each stage in the rulemaking process, in order to obtain approval to proceed. In other words, one must be sent before an NOI, ANOPR, NOPR and Final Rule, depending on which stages you must go through to develop your rule.

ACTION MEMORANDUM

The Action Memo is a cover piece that accompanies all paperwork to the Secretary, and it serves as a sign-off mechanism before all publications. Each Action Memo must contain a statement of the issue(s); legislative background; discussion; recommendations; next steps, if any; concurrences; and any supporting documents. This memo is <u>required</u> for <u>any</u> actions in the rulemaking process.

DRAFT ANALYSIS PLAN

An Analysis Plan should be drafted early on in the process before you develop an ACTS schedule. Like any good planning document, it should explain where you are going, and how you intend to get there. It is an integrated assessment; an up front agreement of all offices conducting analyses. There are several major elements that should be included in a good analysis plan:

- A statement of purpose of the regulation
- A schedule of what analyses you expect to do and when (an overall time plan)
- An NOI and/or ANOPR, if you decide to issue them
- A determination of whether projected impacts will categorize the rule as major versus significant or non-significant
- A discussion of analytical baseline assumptions

- A list of issues to be resolved
- A summary of the major alternatives under consideration
- A summary of offices expected to be included in the concurrence chain
- A public participation plan and list for distribution
- Overall allocation plan for resources needed to develop the regulation.

WORK PLAN DEVELOPMENT

As we stated earlier, preplanning is the most crucial step in the rule-making process. Once you have established an ACTS schedule, you have already begun the development of a work plan. It is at this point that you should also consider the establishment of a draft Analysis Plan, which is a good preplanning tool to include in the total work plan.

Several additional phases of the work plan are described in the following sections.

PUBLIC PARTICIPATION

One of your best resources for input and additional information regarding a proposed rule will come from the Public comment period; particularly from those people being directly affected. Not only is this step required by law, but it also provides the public with an opportunity to impact the content of a rule in its initial stages, as well as to respond to the contents of a rule already under development. We mention public participation here under "Action Initiation" because decisions about the form it should take must be made at the outset. The process itself is lengthy and complicated. Chapter Five provides a comprehensive discussion of planning for public participation, identifying and involving the interested public, evaluating feedback, and responding to it in the most effective way.

IDENTIFY AND OBTAIN PRELIMINARY INFORMATION

This next step in work plan development can be pursued through many channels, including review of pertinent legislation, library research, interviews with individuals likely to be affected, and consultation with other experts in the field. This information should be gathered and reviewed as early as possible, in order to provide a solid data base of background information.

DETERMINE SIGNIFICANCE

Executive Order 12044 requires all executive agencies to distinguish between "significant" and "non-significant" regulations, and to determine which regulations impose "major impacts" requiring special analysis (see Chapter Three). Status of any rulemaking is communicated to the Secretary through the Authorization Memo.

The determination of significance is one of your procedural requirements in the rulemaking process (see Chapter Three). If you consider the proposed regulatory measure to be non-significant, the Secretarial Officers will be assumed to concur unless they indicate otherwise. You (as lead office staff) will then work with representatives of any other interested Secretarial Offices to develop and publish the regulation.

Like other rules, the proposed non-significant regulation is published in the Federal Register. It is commonly followed by a 30-day public comment period, rather than the usual 60-day period allotted to significant and major regulations.

Concurrence and publication of the final non-significant regulation are the last steps, assuming that the rule's status has not been changed to significant by the Secretary, or on the basis of the comment period feedback. The Director of Administration will certify and transmit proposed and final regulations to the Office of the Federal Register. The following sections describe the additional steps involved in the development of a significant or major regulation.

PLAN REQUIRED ANALYSES

We believe that analyses should serve as decision-making tools. If DOE determines that a regulation is significant or major (e.g., imposing annual economic costs of $100 million or more), then a formal regulatory analysis must be prepared and published with the draft and final regulations. If the Environmental Office (EV), in accordance with the legal conclusions of General Counsel (GC), finds that a regulation requires an Environmental Impact Statement (EIS) under the National Environmental Policy Act, then that statement must be prepared in coordination with the regulatory analysis. An Urban and Community Impact Analysis (UCIA) may also be called for under the guidelines provided below. All analyses that might be required for the regulation should be determined early and mapped out in the draft Analysis Plan (see previous section). Some of the possible requirements follow in Chapter Three.

The Regulatory Analysis

The RA generally consists of a five-to-ten-page summary (which is published in the Federal Register) and supporting documentation. The summary is prepared by the lead office, in cooperation with representatives from other interested offices.

The RA serves two purposes in the regulatory process. First, it provides pertinent information which assists in making decisions between different alternatives. An RA also serves to document decisions which have been made throughout the rulemaking process. The RA is circulated to GC, PE, EIA, and IR, and any other appropriate Secretarial Officers determined by the Director of the ACTS system. Review and concurrence follow.

Essentially, the RA is a decision-making tool used to assess direct and indirect costs and benefits; and as an ongoing process it helps to focus the goal(s) of the regulation, while weeding out impractical alternatives. (Refer to Chapter Three for Regulatory Analysis description.)

The Environmental Impact Statement

The EIS is an additional aid to you as decision maker. It is required by the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) if a proposed regulation is deemed to impose significant environmental impacts, as well as economic, social and health impacts in local and regional areas. (For full discussion see NEPA, part 1502.4). The EIS shall provide a full discussion of the impacts, as well as describe the reasonable alternatives that would avoid or minimize adverse impacts, or enhance the quality of the human environment. If an EIS is conducted, remember to include the Environmental Protection Agency in the concurrence chain!

The Urban and Community Impact Analysis

The UCIA is conducted to determine the economic impacts of a proposed regulation with regard to socioeconomic and demographic profiles of specific areas of the country. The analysis is done in order to prevent any disproportionate effects on particular regions or localities. Analyses should also clearly identify the time period over which the indicated impacts are anticipated. Impacts that are short term (under 3 years) should be differentiated from those that are long term (3 or more years). UCIAs are to be brief (15-20 pages) and should contain a 2-3 page summary of impacts accompanied by explanatory material indicating the basis for the judgements in the summary.

ACTION COORDINATION TRACKING SYSTEM (ACTS)

Once you have received authorization to proceed, the next step is to develop a proposed schedule of action, and to provide it to the ACTS office. The schedule must include projected dates for each milestone, from submission of the Authorization Memo through the final rule stage. DOE Form F-1324.1 is to be used for your schedule outline.

After consultation with the ACTS director, a schedule will be mutually agreed upon (usually the same as the one you submit), and then filed with the ACTS office. It is important to realize that the ACTS office will interpret your approved schedule as a binding agreement for action, between you and those individuals involved in concurrence.

The ACTS office conducts weekly meetings to monitor the progress of all CS items, so try to be realistic in your projected milestone target dates in order to avoid unnecessary and embarrassing delays. (See Appendices D and E for sample schedules.)

RULEMAKING STAGES

There are four possible stages of rulemaking. Each one that is used must be published in the Federal Register. They are the notice of inquiry (NOI), advanced notice of proposed rulemaking (ANOPR), notice of proposed rulemaking (NOPR), and final rule (FR). As indicated, the NOI and ANOPR stages are optional, but the NOPR must be implemented before promulgation of every final rule. The following descriptions will give you a good idea of when each stage is most appropriate.

Notice of Inquiry

The NOI is an effective tool to use when you really want an open inquiry into a particular issue. Basically, it asks the public, "What do you think about this issue?" A NOI must be published in the Federal Register, followed by a 60-day comment period. The NOI is rather seldom used, because most offices elect to initiate action at the ANOPR or NOPR stages.

Advance Notice of Proposed Rulemaking

The ANOPR is used when the lead office has a basic idea that it wants to send up as a trial ballon. Like an NOI, it is a preliminary inquiry designed to say to the public, "We are putting out a proposal; here are some of the measures we are considering. What do you think?" Rather than simply seeking information on a particular topic, it goes on to offer a preliminary course of action and encourages constructive feedback. It serves to give the public an early opportunity to participate in the development of a proposed rule, and usually is followed by a 60-day comment period.

The format for the ANOPR is the same as the format for a proposed rule (NOPR) (See Part 2, "Drafting Rules and Proposed Rules" in the Federal Register Document Drafting Handbook), and it should encompass the need for rulemaking, the issues involved and the alternatives considered. If you pose specific questions, you will receive the most direct and valuable feedback from the public.

Notice of Proposed Rulemaking

This step is mandatory in the rulemaking process. An NOPR can be preceded by an NOI and/or an ANOPR, or it can be the initial step in the proposal of a rule. Traditionally, the NOPR has been the usual starting point in the development of a rule; however, lead offices in CS have recently started to

increase the use of NOIs, and particularly ANOPRs in order to encourage greater public participation earlier on in the process. An NOPR must include everything included in a final rule proposal, and it is published in the Federal Register. In essence, it is the substance of the final rule going out for the last time before concurrence.

Interim Final Rule

An interim final rule is alomst always used in those circumstances when an issue is so critical that a regulation must be written immediately. If the critical nature of an issue (i.e., gasoline shortage) demands immediate action, without benefit of a full public comment period, then an interim final rule is issued after an abbreviated public comment period. The rule must be adhered to as though it were a final rule, but with the understanding that it is "for the time being" and that additional public comments and hearings will follow. The lead office essentially says, "We can still meet the needs of the general public in this short amount of time, and amend it later if necessary." Another example of interim final rule use is when a lead office is trying to meet a statutory deadline.

Final Rule

This is the stage you have been working so hard toward: publication of the final rule in the Federal Register. Only after final concurrence has been bestowed can a proposal become a rule. Part 2 of the Federal Register Document Drafting Handbook provides a detailed account of the requirements for this document. The stylistic guidelines are the same as those outlined in the section, "Federal Register Notices."

EMERGENCY REGULATIONS

Similar to an interim final rule, an emergency regulation responds to a problem imposing severe consequences, requiring an immediate response. The basic guide for deciding to implement an emergency regulation is, "Does the public interest require immediate action?" Examples of potential situations requiring emergency regulations include a postal strike, a coal miner's strike, or in the event of war. Emergency regulations are issued very seldom, and with the understanding that although imperfect, they are necessary to the welfare of the public.

FEDERAL REGISTER NOTICES

Publication of a document in the Federal Register serves as official notice of a document's existence and its contents, establishes an accuracy of text, and indicates the date of a regulation's promulgation. The printed Federal Register version of a document constitutes prima facie evidence in a court of law and must be honored by the courts.

Most documents that appear in the Federal Register, including those documents produced by CS, are required by law to be published there, under the Federal Register Act of 1935 (44 U.S.C., Ch. 15), or the Administrative Procedure Act of 1946 (5 U.S.C., 551 et seq.).

Advance consultation with the Director of the Federal Register should take place at least 10 working days before the proposed date of submission of the document. The Director will notify the agency of acceptance or rejection at least 5 working days before the proposed date of publication.

Federal Register staff members have been very supportive to CS lead offices in the past. That consideration should be returned. Make their job smoother and avoid "bottle-necking" the process by meeting their requirements to the best of your ability. The most important tool you have as a reference for style, format, and document content is the Federal Register Document Drafting Handbook (June 1980 is the most recent edition). The following is a breakdown of topics covered, which will be very helpful in the organization and drafting of your proposed rules:

Part 1 - The Federal Register Publication System

Part 2 - Drafting Rules and Proposed Rules

Part 3 - Special Elements in Regulations

Part 4 - Drafting Other Documents

Part 5 - Publishing a Document

Part 6 - Legal Requirements for Rulemaking Documents

Although the handbook may strike you as very technical and detailed, it is an invaluable resource for the writing of regulations. Familiarization with the process and requirements before you start will save you considerable time and revisions before final publication.

Below are some highlights from the Federal Register handbook which will be of particular help if you are new to regulation writing. Elaboration on individual suggestions can be found in the handbook sections indicated in parentheses.

Content, Preamble, Plain English

Content

Regulatory material should be organized into a logical and orderly arrangement that will promote reader understanding and facilitate reference. Be simple, clear and concise in the content of any regulatory document. Text should include:

- Statement of policy, purpose, and applicability
- Definitions critical to the reader's understanding
- Most important applications of the rule and intended impacts
- Exceptions, exemptions, and subordinate provisions
- Results of compliance or noncompliance.

Preamble

The preamble is becoming an increasingly important section in every rulemaking document. Therefore, it deserves special attention at this point in the guidebook.

A preamble to a codified document describes the contents of the document in layman's language. It should discuss the major issues involved, outline the principal differences between adopted rules and alternative rules, and explain the significance of the rules in the document. Preambles are in effect the basic "legislative history" of the regulation, and they answer the following questions:

- What is being promulgated? Why?
- Did the comments received from the public on the proposal substantiate the need for it?
- Did the comments received on the proposal bring out any additional facts or information? Was the proposal easily understood by those it affected?
- Were any alternatives suggested? If so, are the reasons for their adoption or rejection explained?
- Are there any changes in the final rule as a result of public comment that were not in the proposal?
- Are all of the significant comments received on the proposal discussed and answered?

Plain English

Brevity and succinctness are bureaucratic virtues. Following is a list of good drafting practices, recommended by the Federal Register.

- Make short statements.
- Use positive rather than negative statements.

- Use the active rather than the passive voice.
- Use the present tense as much as possible.
- Use simple finite verbs rather than their infinitives, participles, or gerunds.
- Use singular rather than plural nouns.
- Use the same words consistently for the same meaning--avoid synonyms. (Note: this practice can be carried too far; the result is deadly boring writing. Follow this guideline when the repeated use of key, definitive words will provide a sense of consistent structure for the reader.)
- Avoid: unnecessary modifiers, definitions, or references, long and unfamiliar words, legalistic expressions, circumlocutions, and acronyms.
- Use words and forms of popular speech as much as possible.

OTHER REQUIREMENTS

Before proceeding with the drafting of proposed rules, the following checklist should be reviewed.

FEDERAL REGISTER CHECKLIST
FOR PROPOSED RULES DOCUMENTS

1. HEADINGS (Section 2.2 of FR Guidebook)

   a. Name of overall issuing agency _____
   b. Name of subordinate issuing agency, if any _____
   c. CFR designation (a special FR code is required) _____
   d. Agency document designation, if any _____
   e. Subject heading _____
   f. Additional heading _____

2. PREAMBLE (Sections 2.3 through 2.5)

   a. Introduction - answers questions concerning the significance of proposal

   b. Background - answers why and how the proposed rule differs from existing regulations

   c. Corrective action - desired effect of proposal

   d. Compliance and enforcement - requirements, if adopted, penalties, etc.

e. Conclusion - summary

f. Public participation - discusses comment periods, hearings, etc.

g. Authority

h. Words of issuance

3. BODY TEXT (Sections 2.12 through 2.15)

a. Amendatory language
b. Table of contents, if required
c. Authority citation
d. Text of proposal

4. SIGNATURE (Section 5.1)

a. One signed original and two certified copies or duplicate originals (three certified if two-sided document)

b. Printed name of signer and title

c. Date signed (optional)

d. Seal (optional).

CONCURRENCE

There are two kinds of participants in concurrence, those who must concur every time, and those who are invited to concur because the proposed rule is likely to affect their programs. The program office, in conjunction with the recommendations of the ACTS office, can decide who will be in the concurrence chain. GC and PE are always included. OMB is frequently included as well, particularly regarding budgetary measures. Very seldom are offices deleted from the chain at the different stages of development, but additional offices will often be included as new issues arise.

The purpose is to include all interested offices (e.g., GC for legislative intent, EIA if data are involved, the Comptroller regarding funding, and EV for environment issues). Final sign-off (e.g., Secretary, Deputy Secretary, Assistant Secretary of CS, etc.) is determined in the Authorization Memorandum, and ultimately rests with the Secretary of Energy. As soon as concurrence has been attained, the document is sent to the Secretary for approval, at which point it will be ready for publication, if properly formatted, in the Federal Register.

Concurrence is thought of as a final step, and it would be, if everyone concurred. In reality, however, nonconcurrence is often encountered, or extensive "concur with comments." As a result, one more step is added to the cycle

in order to incorporate the most recent comments. It should be emphasized once again that GC is an important factor in the concurrence process, and as a lead office, you should not only contact them early on regarding your proposed rule, but continually throughout each stage of development. Willingness to utilize their advisory services may prevent you from having to experience the frustration and embarrassment of delayed concurrence at the end.

CHECKLIST OF PROCEDURES

The previous sections have provided in-depth discussions about various stages in the rulemaking process. Perhaps the most useful tool will be to return to the checklist provided in the overview, which encompasses all of the necessary steps in the process, and can be used as the backbone for your preplanning efforts.

Although the activities are not necessarily presented in sequential order, the checklist presented in Chapter One should serve as a good guide to direct you through the steps which must be followed in the development of any rule. Tasks that may be performed after the process has been initiated are listed in the Federal Register reference chart. The earlier they are completed, the easier your job will be. Remember, many of these tasks will overlap, so the first preplanning step is to familiarize yourself with the whole list.

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CHAPTER THREE
ANALYSIS REQUIREMENTS FOR CS ACTIONS

This chapter and the next chapter will describe how to prepare a useful Regulatory Analysis. Our discussion of this topic is divided into two chapters in order to answer two key questions: 1) What are the analysis requirements for your proposed program? and 2) How can you ensure that a good analysis will be prepared? This chapter, Analysis Requirements, indicates the specific information that should be included in a Regulatory Analysis, and under what circumstances formal documents are required. The next chapter is a step by step description of how to ensure that the Regulatory Analysis (or any other analysis document) provides the decision maker with useful information in the most thorough and thoughtful manner possible.

First, what is Regulatory Analysis and why has it been required? As a result of increasing public dissatisfaction with government decision making, particularly in instances where regulations were issued whose costs far exceeded their benefits, the Carter Administration issued Executive Order 12044. Executive Order 12044 contained the requirement for a Regulatory Analysis and other regulatory reforms. The Regulatory Analysis is intended to be a thorough analysis of the proposed federal action and its alternatives. The primary purpose is to ensure that you select the most appropriate policy tool for implementation. As such, the Regulatory Analysis is a decision document and not an after-the-fact justification for past decisions. A useful Regulatory Analysis is one that is begun early, reads well, and presents required information to decision makers in a manner that accurately describes the trade-offs among various policy alternatives.

The term regulatory analysis has a double meaning. On one hand, regulatory analysis refers to the formal document (Regulatory Analysis) which must be prepared for major CS actions primarily for public information. On the other hand, regulatory analysis refers to the process used by decision makers to weigh the costs and benefits of any government action in order to choose the best policy alternative. Remember that the Regulatory Analysis document is required by the Executive Order to ensure that government decision makers consider alternatives and weigh costs and benefits carefully before selecting an appropriate policy tool. If you keep these differences in meaning clear in your mind, you will find that preparing a Regulatory Analysis is a matter of documenting, step-by-step, the decision making process normally used for making policy. This decision making process is discussed in detail in Chapter Four.

WHAT TYPES OF ANALYSES NEED TO BE DOCUMENTED?

Based on the perception that good analysis is required for making good decisions, program offices must document their analysis when impacts from a proposed action are expected to be sizable (see next page for specific criteria).

The documentation is a formal explanation of how the government arrived at its decision, what alternatives were considered, and what the effects of the proposed action are expected to be. This process is intended to improve CS policies.

Four major types of documents which can be required are the Environmental Assessment (EA) or Environmental Impact Statements (EIS), the Regulatory Analysis (RA), the Urban and Community Impact Assessment (UCIA), and the Regulatory Flexibility Analysis (RFA). This section briefly describes these documents and the conditions under which they are required. CS develops such a wide variety of rules and regulations that it is impossible for a guidebook to be responsive to all of the questions that might arise. We have therefore tried to include offices to contact for more specific information.

Please note that when all four documents are required for your program, it is crucial that you ensure that consistent assumptions are used in all analyses. Otherwise, it may be impossible for you to compare expected impacts and recommend the appropriate alternative. If you have questions about standard assumptions, price projections, or baseline scenarios, please contact PPE.

WHEN SHOULD YOU PREPARE A REGULATORY ANALYSIS?

Executive Order 12044 gives some guidance on what actions may require a Regulatory Analysis. The Order applies to all potential CS actions including grants, price supports, loan quarantees, rules, and regulations. In other words, any action which could result in major impacts. Typically, the determination for when a Regulatory Analysis is required is made by committee representing several offices in DOE, including your program office, GC, PE, and PPE.

Criteria for When to Prepare an RA

One general set of criteria applies to all CS actions. For any year the action is in effect, a Regulatory Analysis is required of:

1. The direct and indirect effects of the regulation on the private sector or nonfederal government are likely to be at least $100 million. Since the measurable impacts will differ across different CS actions, you should prepare a list of all impacts of the proposed rule or regulation at the beginning of the regulation's development. For example, a loan quarantee program for gasahol plants would likely affect the credit market, the prices and quantities associated with gasahol's raw materials, and the prices and quantities associated with gasahol's raw materials, and the prices and quantities of gasahol production. Indirect effects may be in the prices of other products that use raw materials that compete with gasahol. Some preliminary analysis is required to estimate the size of these impacts. A section below describes other impacts to consider in determining if a regulatory analysis will be required.

2. You should not regard the $100 million as a strict lower limit for doing a regulatory analysis. An analysis should also be done if all impacts are likely to be localized or especially severe on a geographic region, industry, level of government or demographic group.

3. If the action causes competition to decline in any industry or decreases the international competiveness of an industry, a Regulatory Analysis may be required. This could include creation of limitations on entry, larger cost increases for small businesses or restrictions on innovation or new product development.

4. The Secretary, Deputy Secretary, or Under Secretary requires one.

These criteria are admittedly vague and may require some preliminary analysis to determine whether a Regulatory Analysis will be required. Some examples from CS programs will help show how the criteria might be applied. Grant programs, such as Schools and Hospitals, would apply the criteria to matching funds put up by states or municipalities. Price supports, such as the Urban Waste Program, are designed to ensure the private sector producers a minimum price. Applicable criteria might be increasing product prices, impacts on producing regions and impacts on users of the product.

Table 3.1 shows the CS programs that have performed a Regulatory Analysis.

TABLE 3.1

CS Regulatory Analyses

Institutional Conservation Program
(Schools and Hospitals)
Residential Conservation Service
Appliance Standards
Building Energy Performance Standards
Standby Federal Emergency Conservation Plan
Urban Waste Price Supports

Emergency and Other Exemptions

Programs with little impact may be excused from preparing a Regulatory Analysis. In particular, all rules or regulations which only change internal DOE administrative procedures are exempted. Also, government actions can be exempted from a Regulatory Analysis for emergency reasons, such as regulations issued in response to an emergency or that are governed by short-term statutory or judicial deadlines. However, you should be sure the regulation is in response to a real emergency. CS has been attempting to discourage emergency claims since DOE has been criticized by OMB for overusing that claim.

WHAT SHOULD BE IN A REGULATORY ANALYSIS?

Unfortunately, Executive Order 12044 and DOE Memo 2030.1 say very little about how to do a good Regulatory Analysis. While good analysis includes a large portion of judgment and experience, we have tried to provide specific guidance on producing a helpful Regulatory Analysis in Chapter Four.

The preparation of a Regulatory Analysis is similar to what would be expected from a good analysis of any government action. You should view the Regulatory Analysis as a document to help make decisions, not a specific list of topics that must be covered. Executive Order 12044 and DOE Memo 2030.1 encourage program offices to design the Regulatory Analysis to suit the proposed action. For example, Executive Order 12044 says,

> "Each regulatory analysis shall contain a succinct statement of the problem; a description of the major alternative ways of dealing with the problems that were considered by the agency; an analysis of the economic consequences of each of these alternatives and a detailed explanation of the reason for choosing an alternative over the others" (43 FR 112661).

The following describes the sections the Regulatory Analysis should contain. Additional guidance on preparing these sections can be found in Chapter Four.

1. Statement of the Problem: This section succinctly describes the problem the proposed action is designed to solve, and outlines the mandate for taking federal action. This section is not a full-blown introduction, but a brief overview of the problem and the mandate for the government to solve it.

2. Statement of the Policy Objectives: In this section, you should explain to the reader how the objectives of your program relate to national policy objectives. This can be difficult because it is often difficult for program manager and analysts to perceive the full extent of national policy objectives. Also, the objectives of your program may conflict with other energy policy objectives or with economic, social, or regulatory policy objectives. If this is the case, it is important for you to have the issues surrounding this conflict clear in your mind and stated succinctly in this section. While policy conflicts are rarely resolved at your level in the government hierarchy, you can help prepare for show-stopping policy decisions late in the game by being aware of the issues early.

3. Description of Alternatives: You must discuss each policy alternative that you have considered for implementation to solve the stated problem. Since one fundamental purpose of the Regulatory Analysis is to assist decision makers to choose among alternatives, it is essential that those alternatives be described succinctly, comprehensively, and evenly.

4. Estimation of Economic Impacts: This section is a description of the economic impacts of the program. The next chapter contains a more thorough discussion of how to do this. The essential steps are to identify and, to the extent possible, quantify the consequences of the regulation and its alternatives. You should screen the many possible alternatives to three to five that are plausible and relevant. You should include the impacts of each alternative on:

   - Capital and operating expenses of industry, or other groups such as state, counties, or municipalities

   - Other compliance impacts such as reporting requirements or operating delays

   - Macroeconomic impacts such as GNP, employment, prices, foreign trade

   - Competiveness of firms, especially differential impacts on small firms, increased difficulty of entering an industry or decreased competiveness of U.S. firms.

   To estimate the impacts, you should develop a logical framework to trace the regulation's consequences through the economy. You may wish to use a model which focuses on the important and relevant effects of the regulation.

5. Conclusion: This section should describe the logic used to select the chosen alternative, and any criteria used to make that decision. Also, a brief summary showing how the alternative addresses the problem, accomplishes policy objectives, and compares with the other alternatives would be helpful.

6. Supporting Documentation: The purpose of the supporting documentation is to provide more detailed backup for the summary. The analysis should contain the same material and format as the supporting documentation, but emphasize the problem solving that occurs in developing a regulation. For example, the supporting documentation for the Draft Regulatory Analysis for the Energy Efficiency Standards for Consumer Products consisted of separate documents on the Economic Analysis, Certification/Enforcement Analysis and Engineering Analysis. These documents contained much more detailed explanations of the models, analysis and impact estimation.

Sample Table of Contents

Figure 3.1 is a Table of Contents from the Regulatory Analysis prepared for the Energy Conservation Grants Program for Schools, Hospitals and Public Buildings. This outline corresponds closely with the recommended format for a

Regulatory Analysis. First, the goals and objectives of the action are described. Second, alternatives are stated. The Energy Conservation Grants Program has looked at both alternatives to the program and alternative regulatory provisions. You may also want to look at alternative enforcement mechanisms or alternative levels of the regulation. (Alternatives are discussed in more detail in the next chapter and in the appendix.) Next, the alternatives are evaluated and compared, and economic impacts addressed. While the general outline would be similar for different government actions, some programs may have different alternatives or impacts.

The last section of the sample Regulatory Analysis is an Urban and Community Impact Analysis. According to OMB Circular A-116, this analysis must be added by the program office as a separate section of the Regulatory Analysis.

SAMPLE TABLE OF CONTENTS

Energy Conservation Grants Program for
Schools, Hospitals and Public Buildings

b. Economic Issues at the Institutional Level
   1. Capital Expenditure Requirements
   2. Impact of the Program on Costs to Institutions
   3. Effect of Regulation on Competition Among Architectural/Engineering Teams
   4. Impact of the Program on Suppliers of Energy Conserving Equipment

VI. Urban and Community Impact Analysis
   a. Introduction
   b. State/Regional Implication
   c. Implication for Communities
   d. Implication for State and Local Government

FIGURE 3.1

WHEN SHOULD YOU DO ENVIRONMENTAL ANALYSIS?

The National Environmental Policy Act (NEPA) is the basic act requiring analysis and documentation of a government action's impacts on the environment. The requirements of NEPA can be very simple or quite complex, with serious legal implications. However, when the environmental review and compliance process is out of line with the program planning process, delays and litigation can result.

To avoid those delays, resolution of environmental compliance issues should be obtained early in the rulemaking process. A Guide providing information on the NEPA process, its timing requirements, and formulation of environmental compliance plans is available. For information on the Guide or on other environmental compliance questions contact:

NEPA Affairs Division
Office of Environmental Compliance and Overview
Assistant Secretary for Environment
Forrestal Building, Room 46-064
Phone 252-4600

WHEN SHOULD AN URBAN AND COMMUNITY IMPACT ANALYSIS BE PREPARED?

Former President Carter, in his March 26, 1978 urban policy message to the Congress, announced that executive agencies should be required to prepare urban and community impact analyses (UCIA) for the major policy and program initiatives they propose. He determined that such analyses are necessary to ensure that potentially adverse impacts of proposed federal policies on cities, counties, or other communities be identified during the decision-making process.

You are required to do a UCIA in order to identify the socioeconomic impacts of your proposed rule, such as resultant changes in income distribution, population size and composition and employment trends. (See OMB Circular No. A-116 for a detailed discussion of areas to be considered.)

Urban and community impact analyses are to be prepared on proposed major policy and program initiatives identified by each agency. All types of initiatives should be considered candidates for this type of analysis, including new programs, expansions in budget outlays, program changes leading to shifts of resources among recipients, program changes affecting state and local governments, changes in tax provisions, new regulations, new regulatory authorities, and other changes in policy or program direction. Only those regulations which are considered major initiatives under Executive Order 12044 are required to be the subject of a UCIA.

What Should Be in a UCIA?

A UCIA is typically broken down in the following way:

Section I - Summary
Section II - Program Description
Section III - Characteristics of Target Institutions
Section IV - Impact Analysis
Section V - Appendices

The summary section should be written last, outlining the major impacts discussed in the analysis section.

Section II provides a detailed description of the goals and content of the proposed rule. You should include procedures to be followed, sources and anticipated amounts of funding, identification of program participants, and their administrative responsibilities. It is also important to describe any system developed to monitor the flow of funds and to summarize any program activities to date.

Section III points out the targeted population for the proposed rule, and provides a detailed description (where located, employment factors, financial status, economic and potential characteristics, etc.). The purpose for this in-depth portrait is to provide a basis for comparison with the population at large in order to determine who the program is affecting.

Section IV should discuss the extent of impacts as measured against the factors highlighted in the OMB circular. Even where no measurable impact exists, the UCIA should still detail the reasons why this is the case.

How Should You Do a UCIA?

The first step is to gather standard data which can be used as a basis for comparison against program data you are able to collect. A good UCIA

depends on more program information than is typically available. Examples of pertinent standard information can be found in U.S. Census data, the Bureau of Labor Statistics, local planning organizations, and can also be obtained from trade associations for a cross section of particular participant characteristics by region, state and county (i.e., population density, income levels, climate statistics, housing starts, poverty levels, and unemployment rates). Although providing only estimates, they are the best source to use at this stage as a basis for assessment of your progrm findings.

Quantitative program data is difficult to obtain. Remember, this is an impact analysis, therefore, your approach will differ somewhat from population affected against the population at large for a particular area. The analysis will identify the characteristics of the population affected, and to a limited extent how: for example, if program dollars are allocated on a state-by-state basis, the UCIA focuses on the impacts of different funding levels on specific states and designated communities. Remember the UCIA is not designed to show specific programmatic impacts, but who (what groups, communities, regions, etc.) it affects by its existence.

Your second step is to locate any impact analysis models that are applicable to your analysis. (See Chapter Four for a detailed description of model identification and usage.)

The third step is to review the amounts of federal dollars being allocated for the program to various locales, i.e., is there any measurable impact on particular communities as a result of the pattern of dispersement? You can also survey trade associations to determine any impacts. For example, in the Urban and Community Impact Analysis for the ICP (Schools and Hospitals) Program, a comparison was made between standard data for the same industry after program implementation.

The appendices should include more detailed information on data and methodology. Be sure to state the sources from which you obtained the information. It is also wise to present data in the appendices with references contained in the text, so that your data doesn't overwhelm your text.

WHEN SHOULD YOU DO A REGULATORY FLEXIBILITY ANALYSIS?

Concern about the overregulation of small business lead to legislation which requires you to consider the impact of regulations on small entities. The recent Regulatory Flexibility Act (P.L. 96-354) requires an analysis of the impacts of a proposed government action on small entities and to consider alternative compliance standards for small businesses or small governmental units. Although you will need to consider several new procedural obligations for involving small entities in the rulemaking process, most of the analysis requirements of the Regulatory Flexibility Act are structured to mesh with those of Executive Order 12044. The paragraphs below describe when an additional analysis, the Regulatory Flexibility Analysis (RFA), must be performed and what it should contain. Since this is a new requirement, you might wish to contact the Office of Policy, Planning and Evaluation (252-9306) for information on how the Regulatory Flexibility Act is being implemented.

The RFA should include the following:

- A description of the small entities to which the rule will apply. This could include information on the competitive and financial status of small entities.
- A description of extra paperwork that will be caused by the action
- An identification of other federal rules that overlap or duplicate this action
- A discussion of alternatives to the proposal emphasizing ways the burden on small businesses might be reduced.

For those actions that require a Regulatory Analysis, the RFA can be included as a separate chapter of the Regulatory Analysis.

COMMON REGULATORY ANALYSIS PROBLEMS AND PITFALLS

What follows is a brief discussion of common problems and pitfalls encountered when preparing Regulatory Analyses.

Is the Analysis Started Early?

Analysis must be done throughout the development and implementation of government policies in order to ensure that the best options are pursued. At certain times during this process, it is necessary to formally document how and why certain decisions are made. These documents--EIS, UCIA, RA--are published for public scrutiny and summarize what are sometimes major analytical efforts. There are other formal documents and memoranda (Action memos, decision papers, etc.) which are internal to CS and DOE which must be prepared that also report analytical results. Internal memos, particularly Action memos, must be written and approved very early in the process. To meet these early analytical requirements, it is crucial for you to begin your analysis efforts as early in the process as possible.

Is the Analysis Used for Making Decisions?

A major purpose for requiring Regulatory Analyses is to provide decision makers with information to improve federal regulations. This means a document with useful information and data on estimated impacts. Often analyses attempt to provide data on every conceivable consequence. This often blurs the important or relevant results. In addition, the results of the analysis should be presented clearly so the tradeoffs are obvious.

The Regulatory Analysis should be used as a decision document at a very early stage in the regulation's development. A management review to discuss

the objectives of the program and identify relevant alternatives will provide management an opportunity to become informed of your thinking and provide early policy oversight.

Perhaps the most frequent criticism of Regulatory Analysis in general is that the documents are prepared to justify past decisions rather than to aid current decisions. If the document is to be used as a decision tool, the policy alternatives must be compared early in the process, and the results of that comparison acted upon.

Is the "Problem" Adequately Described?

The first chapter of most Regulatory Analyses must describe the problem and the reason for taking action. Frequently, the "problem" is described too generally so that the specific areas (economic, environmental, etc.) are inadequately discussed. To properly demonstrate that a problem exists, direct reference should be made to existing or projected market conditions with respect to the areas being considered for action.

Is the "Base Case" Scenario Taken Seriously?

One of the key technical steps in analysis is to develop a base case scenario of a "business as usual" world (i.e., "no-action"). Frequently this base case is not projected adequately; for example, 1) all the relevant areas which could be affected by the action or its alternatives are not reported; 2) the time period during which the action and alternatives could affect the areas is not discussed.

The base case is important because all the policy alternatives are compared to it. Even where governmental action is mandated by statute, the base case is used as a benchmark to rank the policy alternatives. Often, legislation can permit the agency to choose "no action" if no other alternative is warranted. This alternative should be seriously considered.

Are Policy Alternatives Impartially Described?

Frequently, "straw men" alternatives are presented, described, and dismissed in a few summary paragraphs. Legitimate policy alternatives are those which adequately address the causes of the problem, are realistic to implement, and possible to comply with. In short, the alternatives must be comparable to each other and to the main action under consideration.

Are Costs and Benefits Estimated Properly?

Costs and benefits must be calculated for each alternative considered. The appropriate measure, for comparative purposes, is the difference in costs and benefits between the alternative cases and the "no action" base case.

In addition to administrative costs and enforcement cost, private compliance costs such as reporting costs, training costs, and avoidance costs must be calculated. These costs should be quantified to the extent possible on a common scale to facilitate comparisons. Similarly, program benefits should be calculated and quantified to the extent possible. Since many government actions operate outside private markets, it may be difficult to find monetary measures for benefits. In those cases, ingenuity is required to approximate the value of benefits as if a market existed.

Are the Models and Data Adequate?

Impacts should be quantified to the extent possible. However, when information or data is not available or numerical models are inadequate, the analysis must rely on descriptive material. If adequate time is available, models and data can be developed and gathered. However, all model development should be clearly described in supporting documentation.

Are There Any Alternatives?

Many program offices feel that the legislation eliminates all alternatives. As long as you have some choices to make, you should evaluate the alternatives. It is often helpful to actually make a list of decisions that must be made. The elements on this list can become the alternatives used for the Regulatory Analysis.

Is the Analysis Readable?

In order for the Regulatory Analysis to be useful to decision makers, the document must present information in an accessible and readable form. Creative use of simplifying graphics which list economic impacts or describe policy tradeoffs can be quite helpful. In most cases, simply restricting the use of technical jargon will improve the readability of the documents enormously.

CHAPTER FOUR
HOW TO DO GOOD ANALYSIS

This chapter provides information on how to do good policy analysis. The guidance and suggestions are generic and are not limited to doing a good Regulatory Analysis. It suggests a general paradigm for program analysis and evaluation. However, the chapter also contains some specific suggestions and details on how to use the paradigm to prepare a Regulatory Analysis. In this way, we hope this chapter helps you to conduct a proficient analysis, to use the analysis for decision making and to prepare a good Regulatory Analysis.

ELEMENTS OF ANALYSIS

The important elements of a regulatory analysis are essentially the same as those of any policy decision. These elements are depicted in Figure 4.1 below. The first step is to state the problem that your proposed program is designed to solve. Next, you must identify the goals and objectives the regulation is supposed to address. These goals may be set by Congress, DOE, CS or the program offices. Stating them explicitly will help you see alternatives for dealing with the problem. Even when Congress seems to have specified a regulatory approach, there is still flexibility in identifying relevant alternative forms or levels of the regulation. For example, the program offices may be concerned with alternative levels of the regulation, alternative implementation dates, or alternative enforcement mechanisms. In addition, analyzing alternatives that may be ruled out by Congress, such as no regulation, provides a benchmark against which to judge other alternatives. Finally, should the analysis show that nonregulatory alternatives are more desirable, your office could inform Congress.

Following identification of relevant alternatives, the analysis should investigate the consequences or impacts of choosing one alternative rather than another. This is often done using a no-action alternative as the benchmark against which other alternatives are measured. Estimating impacts often requires constructing models to help compare alternatives. The next step is to establish criteria based on efficiency, equity, effectiveness and feasibility to compare the alternatives. The final step in an analysis is to make a decision and select the most appropriate alternative for implementation.

Elements of Analysis

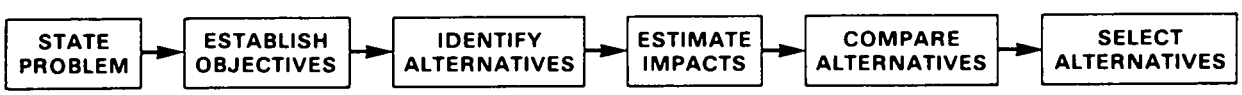
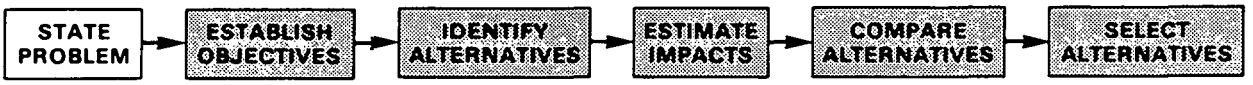


FIGURE 4.1

The rest of this chapter is a step-by-step description of how to do good analysis based on these elements. We recognize that good analysis is frequently an art that requires experience rather than a list of steps; however, we feel a review of the steps of analysis and how to accomplish each step would be helpful to most analysts.

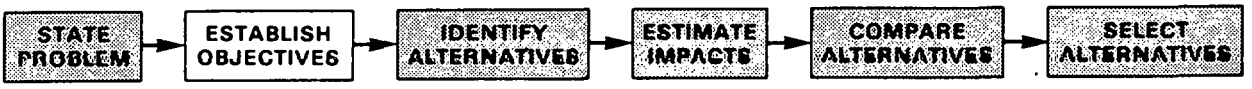


1. State the Problem

Spell out in clear and simple terms exactly what problem your proposed program is designed to solve. It is not necessary to provide lengthy and detailed background information, but it is essential to report the key factors causing the problem. Care must be taken to refer to facts about actual conditions in the world. Vague statements which refer the reader to other studies or programs are unnecessary to complete this step of analysis.

Spell out the mandate you have for taking action. There must be a clear rationale for government involvement in the problem, otherwise there is no use for continuing with your program further. In most instances, the mandate for CS actions originates in various pieces of energy legislation. It is not sufficient, however, to simply paraphrase particular sections of legislation to explain your mandate for action. It is necessary to do some interpretive thinking about the statute to ensure that the problem Congress is addressing still exists, and is precisely the one you are trying to solve.

Be aware that you may find yourself writing a full-blown introduction or justification for your program. Avoid this. The quality of this section depends upon its succintness and clarity, and not its verbosity.



2. Establish Policy Objectives

Establishing policy objectives is the next major step in analysis. Try to explain how the objectives of your program relate to national policy objectives. At first blush this may appear to be a trivially easy task. Unfortunately, it is often difficult for program managers and analysts to perceive the full extent of relevant policy objectives. Furthermore, because objectives frequently conflict, it is often difficult for program managers and analysts to rank policy objectives or to know how much of one objective to trade off for more of another.

How to Define Objectives

You can do several things to help define policy objectives. At the national level, a review of legislation and its history might be helpful. This includes discussions with legislators or other persons familiar with the legislation. Similarly, discussions with DOE policy makers may also help to define the problem and the policy objectives. Also, review CS documents that reveal CS and program office objectives. The Project Summary Documents (the "Gold Book") and annual operating plans contain explicit objectives for many CS programs.

You may find it helpful to categorize relevant policy objectives in the following manner in order to see their interrelationships more clearly. For example, the National Energy Conservation Policy Act (NECPA, Pub. L. 95-619, November 9, 1978) authorized the implementation of an Energy Conservation Grants Program for Schools, Hospitals and Public Buildings. The Office of Government Conservation Programs in CS is implementing the program. The national policy objectives of NECPA's grant programs are to save energy and reduce energy costs to institutions and to encourage the shift from relatively scarce energy resources to renewable energy resources. DOE's principal objective in this instance is to implement this NECPA-mandated program in an efficient and timely manner. Similarly the Office of Government Conservation Programs has been authorized to implement the achievement of all of these objectives. To do so, they establish their own program objectives such as: to maximize the participation of eligible institutions, to minimize the cost of administering the program, and to ensure that special assistance is provided to those institutions most in need. Figure 4.2, below, illustrates how these policy objectives can be categorized in a simple hierarchy.

An Example of Categorized Policy Objectives
for the Energy Conservation Grants Program

- National Policy Objectives
  1. To conserve energy
  2. To reduce energy costs to institutions
  3. To encourage shift from scarce to renewable energy resources

- DOE Policy Objectives
  1. To conserve energy
  2. To implement program in a timely and efficient manner

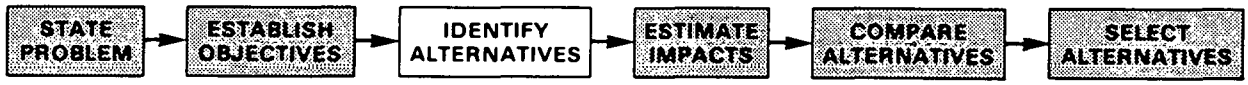
- CS Program Office Objectives
  1. To maximize participation of eligible institutions
  2. To minimize cost of administering the program to ensure that special assistance is provided to institutions most in need

FIGURE 4.2

Conflicting Objectives

Because policy objectives usually result from the political process and not from some orderly decision making process by like-minded individuals, it should come as no surprise that these objectives frequently overlap and contradict one another. The discussion above may help you to identify areas of overlap and contradiction; but it can do little to solve these problems. However, early identification and attempted resolution of potential conflicts is the best way to avoid "show stopping" policy conflicts late in the process.

One particular example of potential conflict between policy objectives requires special mention, particularly in a guidebook of this kind. For CS, Congress has enacted several significant pieces of energy legislation in the past several years which has authorized the implementation of several major regulatory programs: Building Energy Performance Standards (BEPS), Appliance Energy Efficiency Standards, and Industrial Energy Conservation Reporting are prominent examples. The principal objective of these and other similar programs is to conserve energy in various sectors of the economy. During this same period, two Administrations (Ford and Carter) pursued regulatory reform policies whose principal objective has been to reduce burdensome impacts from federal regulations on the U.S. economy. Conflict between these two policy objectives--conserving energy and reducing regulatory burdens--would be minimal if nonregulatory energy conservation policies were pursued; however, the fact that the relevant CS program office felt that Congress has mandated a regulatory approach for those three particular programs signals conflict between these objectives, which has caused some headaches in the program offices.



3. Identify Policy Alternatives

After policy objectives have been established, your next step in the analysis is to identify alternative policy approaches for accomplishing those objectives. There are always decisions to be made. These decisions mean choosing among relevant alternatives. For example, Congress may have allowed the agency to determine the timing for implementing a regulation. In this case, the relevant alternatives would involve the rate at which the regulation is implemented. Other alternatives could be various enforcement schemes. It is important to remember that as long as you are making decisions, you do have alternatives to consider.

In some cases, you will find that the range of available alternative federal actions is limited somewhat by the relevant statute. In the presence of such limitations, it is still important to examine alternatives, because if it is found that additional flexibility in the statute would allow CS to achieve Congressional objectives more efficiently, such recommendations should be included in DOE's legislative program.

Possible Alternatives

Four categories of alternatives should be considered:

- alternative federal actions for accomplishing policy objectives
- alternative stringency levels for these actions
- alternative implementation strategies
- alternative enforcement strategies.

When describing each policy alternative, you should discuss the advantages and disadvantages of each policy for solving the stated problem and achieving policy objectives. It is also important to explain other attributes of the policy alternative to the reader. Of particular interest are such items as:

- How is the alternative to be implemented? Are there particular administrative costs, problems, or advantages that the reader should know about?
- How is the alternative to be enforced? Can compliance be easily avoided?
- How effective is the alternative? Can its results be easily measured? Can it be "fine-tuned" if conditions change?
- How might the alternative impact the federal budget?

A wide range of alternative federal actions is listed below. A brief discussion of each alternative, as well as examples to illustrate how to consider alternative stringency levels, implementation strategies, and compliance strategies follows in Appendix B.

Alternative Federal Actions Appropriate For CS

- Rely on Market Forces
  - "No-action" alternative
- Governmental Requirements
  - Performance Standards
  - Prescriptive Standards
  - Price and Profit Regulations
- Economic Incentives/Disincentives
  - Tax Credits
  - Loan Guarantees
  - Price Supports
  - Grants
  - Low-interest Loans

- Guaranteed Purchases
- User Charges, Fees
- Liability Measures

- Information
  - Labeling
  - Public Information Programs
  - Information Reporting Requirements
  - Advertising

Screening Alternatives

One of the first steps is to screen the vast range of alternatives to some manageable number. This requires a preliminary analysis of what the legislation requires and what decisions you need to make. Answering the following questions for each alternative may help to narrow your list to three to five relevant options.

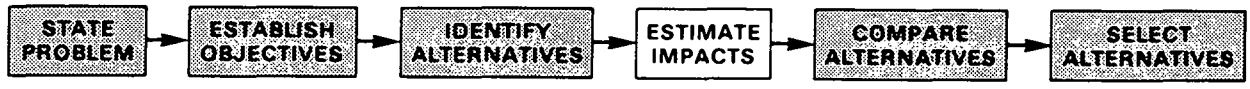
1. Does the alternative solve the problem the government action is designed to correct?

2. Is the alternative an improvement over existing regulatory programs and government actions that are presently dealing with the problem?

3. Identify a scenario of how the proposed alternatives will deal with the problem. List expected responses to the action, including adverse impacts. How do these impacts compare with the other alternatives?

4. Identify data collection requirements for each alternative. Identify, to the extent possible, availability and costs of data collection for analysis, evaluation and monitoring. Are the data requirements more or less for this alternative than for others?

5. Review previous studies of the impacts of similar government actions. Have they been successful? How likely are they to produce the desired effect and with what impacts?



4. Estimate Impacts

Once you have identified three to five relevant alternatives, you should build into the development of the regulation an analysis of each alternatives' impacts. If the alternatives represent realistic choices, a careful

analysis of the impacts can help decision-makers produce cost-effective regulations and at the same time fulfill national energy policies. Program managers should stress that justifications of already made decisions serve little purpose.

Identify Impact Areas

Energy regulations often result in a wide range of impacts. It is therefore important to identify those impacts areas that are essential for determining which policy alternative to pursue. A Regulatory Analysis focuses on the economic impact of a regulation, but since it is also possible for environmental, social, or administrative impacts to determine the feasibility and desirability of a regulation, it is important to consider those impact areas as well.

In most cases, the task of analyzing impact areas can be eased by classifying the impact areas as follows:

- Compliance costs and burdens on groups and enterprises in the private sector
- Implementation costs and burdens on federal, state, municipal, and local levels of government
- Macroeconomic impacts on GNP, employment, prices, income distribution and foreign trade including international competitiveness
- Regional economic impacts on communities and urban areas
- Microeconomic impacts on relative prices and competition.

Analyzing the impacts from a regulation and its alternatives on all of these areas can be a complicated task indeed. It is crucial to remember that your analysis should not include unnecessary detail.

Remember that analysis of these impact areas is not strictly an academic exercise in measuring the costs and benefits of a particular regulation and its policy alternatives. Examination of these areas is intended to aid policy decision-making and should take into account the various adjustment processes that individuals, businesses, and public institutions employ to avoid the burdens of complying with and implementing regulations.

How to Estimate Impacts

Measuring the impacts of a regulation or comparing two regulatory alternatives usually means modeling the effects of the regulation and its alternatives. Estimating the impacts of the regulation requires projecting the regulation into the future and comparing it to a world without the regulation. Since no one can be expected to incorporate all possible assumptions and parameters into such an analysis, a model is used for simplification.

Use of Models

Models are a common tool of analysis. A model is a simplification of reality used to predict or at least indicate the consequences of choosing one alternative. Models are often quantitative but they need not be econometric monsters; they can just as easily be verbal or physical. In fact, most decisions are made using simple models that allow us to easily determine which facts and consequences are most relevant.

A valuable effort in analyzing regulatory alternatives is the appropriate construction and use of models. A model allows the analyst to single out certain facts as more important than others. It can also help make explicit the assumptions and relationships within the problem.

There are a number of models that can be used to analyze impacts of CS regulations. Several of these have been developed by DOE staff, but many others have been developed for CS and DOE through contract research. A brief summary of these models and addresses for obtaining additional information are presented in Appendix C.

Model Development

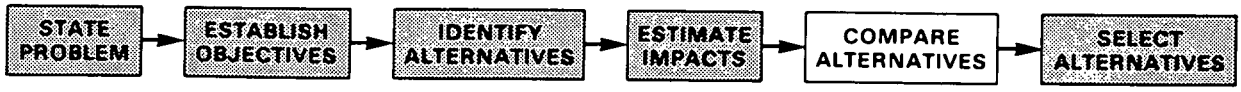
Often you will find that existing models do not meet your exact needs. This may mean refining an existing model or starting from scratch. Should you decide to do either, a number of questions and points should be considered.

- Will the models answer the relevant questions? Model building easily becomes an activity performed for its own enjoyment if not constrained by purpose. Avoiding this will require a constant dialogue between the program office and model builders.

- Are the variables and data accessible at a reasonable cost? Output from a model can only be as helpful as the quality of the model and the data. For example, if a projection of energy savings requires a projection of GNP, then the quality of the GNP projection must be ensured.

- Is the theory or process well enough understood to allow construction of a model?

- Can the theory and model be tested with data not used to construct the original model? This will help determine how well the model might predict impacts from the alternatives.



5. Compare Alternatives

CS regulations are a form of public investment. Regulations attempt to achieve national energy goals through laws and rules. However, rules and regulations are likely to cause some negative impacts--and some alternatives more than others. When choosing among alternatives, your first decision is whether any alternative is worth doing at all. If several alternatives are worthwhile, your next decision is which one yields the most return for its costs.

Public investment, like private investments, can be judged on several criteria (returns, risk, investment liquidity). Criteria for public investments might include cost-effectiveness, flexibility, feasibility and equity. Each alternative will have some strengths and some weaknesses. It must be remembered that quantifying the criteria does not eliminate careful judgment. As a guide, you should consider these suggested criteria as a basis for evaluating the alternatives. The criteria and decision rules should relate to program objectives. If the goal is to cost effectively reduce energy consumption, one criterion could be net present value of the investment compared to energy saved.

Cost-Effectiveness

The most common evaluation techniques are those that aggregate and compare alternatives' costs and benefits. Among the common cost-effectiveness criteria are calculations of benefit cost differences, net present values, internal rates of return, and costs per barrel. Taken as a group, cost-effectiveness measures provide a statement of the advantages and disadvantages of a particular alternative. Cost-benefit analysis, net present value, and life-cycle costing are three criteria that are commonly used in Regulatory Analyses. The three criteria are similar and are often used to refer to the same analytic technique.

There are essentially three steps in a cost-benefit analysis.

1. List all costs and benefits of the proposed alternative.

2. Calculate and estimate all costs and benefits in dollar terms.

3. Discount all future costs and benefits to the present.

Anyone familiar with cost-benefit analysis realizes how difficult these tasks are. The list of all benefits and costs should include all indirect effects and externalities. Costs must be defined as opportunities foregone if the project is adopted. There may be different costs and benefits depending on the perspective of the analysis. For example, a cost-benefit analysis from a

national perspective of a conservation program could include the reduction in overseas oil as a national benefit. However, the analysis of the same program from the perspective of a small businessman might exclude increased national energy independence as a benefit. A final problem that often seems to swamp the others, at least in terms of discussion and argument, is which discount rate to use. The choice of a discount rate can greatly affect the ranking of alternatives. A low discount rate tends to favor alternatives whose benefits are further into the future.

Net present value (NPV) is an evaluation criterion that many regard as synonymous with cost-benefit analysis. Other analysts use NPV to refer to discounted cash flow techniques that do not attempt to estimate the value of costs and benefits such as externalities. The NPV compares all discounted inflows of benefits with all discounted outflows. The decision rule is that if the alternative's NPV is greater than zero, the alternative is worthwhile; less than zero unacceptable; equal to zero marginal. The most desirable of several alternatives, all with positive NPVs, is the alternative with the largest NPV. Just as with cost-benefit ratios, the estimate can be for a national NPV, for all affected groups, or for selected individuals. NPV calculations suffer from the same discount rate problems as cost-benefit analysis.

Life-cycle costing is similar to the procedure used for benefit-cost analysis or NPV calculations. Life-cycle costing is helpful in evaluating the attractiveness of energy investment decisions. DOE has issued rules for establishing the methodology and procedures for conducting life-cycle cost analyses in Federal Building (45 FR 5620, Jan. 28, 1980). The methodology description is similar to that for NPV calculations; however, the emphasis is on costs since the alternatives' benefits are expected to be the same. For example, life-cycle costs could be compared for two alternative hot water heaters, each having the same performance characteristics. Net life-cycle costs are an extension of life-cycle costs that include different benefit returns.

The methodology description in the Federal Register lists several guidelines that might be considered in life-cycle costs, benefit-cost analysis, and NPV calculations. Among them are:

- Externality impacts of imported oil are to be considered by assuming the investment cost is 90% of the actual investment cost.
- A before tax, real discount rate of 10% is required. This rate is consistent with OMB's rate for use in evaluating time distributed costs and benefits.
- Energy price projections are based on average retail prices. DOE is presently considering using marginal prices or costs of energy to reflect the value to the nation of conserving energy.

There are a number of other cost-effectiveness measures. Several of these such as investment payback period and Btu saved per dollar may help add to the analysis. However, since these measures do not adequately consider the time value of money, as well as other problems, they should not be used as the sole criterion of cost-effectiveness.

Flexibility

Another criterion that could be applied to regulatory alternatives is the flexibility of an alternative approach. In order to reduce the burdens of the regulation, it is helpful to specify alternative ways of achieving compliance. The firm or individual can then choose the least costly way of complying. Similarly, an alternative that can be adjusted after implementation will be preferred to one that cannot, other things being equal.

Feasibility

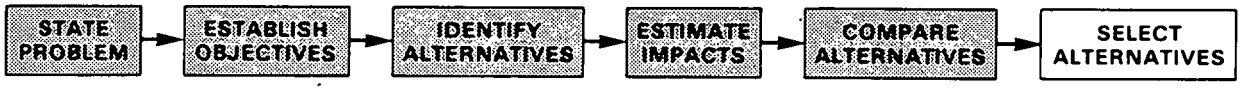
Feasibility refers to whether the government's intervention will accomplish its objectives. It includes the ideas of administrative feasibility and enforceability. From the administrative side, alternatives need to consider whether the program can be adequately administered by DOE; this should include an evaluation of DOE resources that will be required.

Enforcement is essential to the proper functioning of a regulation. There are two problems: 1) detecting violators and 2) forcing or encouraging violators to comply. Evaluation of enforcement should consider the mechanisms people will use to avoid the regulation.

The public's concern over federal regulation is usually a result of over- or undercontrol of enforcement, compliance and regulatory administration. Attempts to write clear regulations that provide realistic compliance requirements and strategies will help to avoid this problem.

Equity

Equity is an evaluation criterion that is highly subjective, but quite important. Care should be taken to estimate the impacts of the alternatives on specific geographic regions, or industries, or other groups that could be disproportionately affected. Mechanisms for allowing petitions for exemptions and exceptions should be stated clearly. Equity concerns can also be discovered through ANOPRs and effective use of public participation.



6. Select an Alternative

Your analysis should conclude with a description of the reasons for your choice of alternatives. It should explain the logic of your choice and include a description of how your alternative will address the problem. It should be specific in mentioning the criteria that were used to evaluate the alternatives and how each alternative compared.

Make a Decision

"A man who is...afraid to make decisions which make him unpopular is not a man to represent the welfare of the country."

H. S. Truman

CHAPTER FIVE
PUBLIC PARTICIPATION

GOALS

The goals of encouraging the public to participate in the rulemaking process are three-fold. First, the Department wants to make a conscientious effort to involve the public in regulatory decision making and to be responsive to its concerns. Second, it is undoubtedly desirable to achieve the best rules possible, and broad scrutiny during the regulatory process will help assure this end. Third, public participation will strengthen DOE's legal position should it become necessary to litigate the validity of a rule. Criticism of a regulation during its development sharpens the rule's focus and refines its rationale. Involvement of the public acts as a safequard against promulgating a rule that the courts might later strike down as "arbitrary or capricious."

MANDATES

Public participation is not just a good idea:. it's demanded by law. The Administrative Procedures Act (APA) first legislated these concerns in the 1940s, requiring that the public be warned about an impending rule via Notice of Proposed Rulemaking (NOPR), involved in the process, solicited for comment, and advised about the disposition of those comments in the Federal Register. Court decisions in the 1970s supported the concept of public participation by demanding "on-the-record" rulemaking. All input from the public must now be carefully documented and addressed by the regulatory agency.

Among its other mechanisms for improving government regulations, Executive Order 12044 "beefed up" APA's public participation edicts in 1978. It called for creation of the regulatory agenda, which serves as a very early notice to the public of rules under consideration. It strongly recommended use of the Advanced Notice of Proposed Rulemaking (ANOPR), public hearings and outreach efforts, a writing style employing "plain English," and format improvements in Federal Register presentation. It extended the public comment period from the old 45 days to 60 days, and reiterated the demand for published response to comments.

DOE's internal order 2030.1, which directs its staff to comply with the Executive Order, mandates essentially the same public participation requirements.

WHERE DOES THE PUBLIC COME IN?

Interested members of the public are formally served notice of DOE's rulemaking efforts at the following points in the regulatory process:

- The Regulatory Agenda, which DOE publishes each April and October in the Federal Register.
- The Calendar of Federal Regulations, which is published by the U.S. Regulatory Council in the Federal Register (and also as a separate book) each May and November.
- The Notice of Inquiry (NOI) or ANOPR, each of which--if chosen as an appropriate regulatory tool--is published in the Federal Register.
- The NOPR, a legal requirement for soliciting public comment, is published in the Federal Register.
- The Final Rule, (notice of promulgation), which is published in the Federal Register.

Regulatory Agenda

You must submit information on your developing regulation to PPE in March and September each year. The accumulated data on all CS regulations will become part of the agenda that DOE will publish in the Federal Register. According to DOE 2030.1,

> For each significant regulation under development, planned for republication, or otherwise under review, the regulations agenda will:
>
> (1) State the need and legal basis for the regulation, and current stage of the development process;
>
> (2) Indicate if a regulatory analysis is required; and
>
> (3) Include the name and telephone number of the lead office contact . . .
>
> Each agenda will also give the status of those regulations listed on the previous agendas.

Thus, the agenda will reflect the progress you office has made on each of its regulations every six months.

Calendar of Federal Regulations

Each March and September, PPE again collects regulatory information from the lead offices--this time for the Calendar of Federal Regulations. DOE is one of the Executive Agencies that compose the Regulatory Council, and as such regularly contributes rulemaking data to the Calendar, although for major regulations only. The Regulation Agenda includes information on all regulations, and it is coincidental that its schedule matches that of the Calendar. The regulatory summaries for the Calendar are brief indeed--about 4 printed pages apiece. Still, they include a wealth of information (see Figure 5.1).

The Other Rulemaking Notices

The mechanics of generating and publishing the NOI or ANOPR (if used), the NOPR, and the final rule have been covered in Chapter 2. The aspect of these notices covered in this chapter is the public comment period.

Executive Order 12044 lengthened the comment period from 45 days to 60 days so that the public can be more involved. However, the "right to know" must be balanced against the need to implement in some urgent instances, and the comment period may be shortened to as few as 30 days. Only in dire situations (e.g., the Oil Embargo of 1973) involving the security of the country will it be cut to fewer than 30 days. These decisions must be made by the director of the lead office, subject to Secretarial approval and agreement from GC.

Attitude and Success

The philosophy of regulation has recently been developing a more generous attitude toward soliciting public comment. Outreach efforts--such as hearings, workshops, mailouts, contact with interest groups, and other, more innovative methods--are being urged, as is more widespread use of advanced notice of rulemaking activities.

Let's face it--if the staff member in charge of public participation does not bring a professional sense of commitment to the task, the participation effort will never live up to its potential. The person who considers public participation a necessary evil or nuisance can hamper progress even more.

If you are assigning responsibility for public participation, conscientiously assess the degree of enthusiasm for outreach efforts among the staff candidates.

- "Brainstorm" innovative methods for involving the public with staff to gauge interest (input from other offices will be helpful at this point. "Planning for Public Participation," below, provides guidance regarding other staff support within DOE).

Contents of Entries

Each CALENDAR entry describes a proposed regulation and contains the following information:

Title and CFR citation	Title of the regulation under development and the CFR citation for the regulation. An asterisk (*) after the CFR citation indicates that the regulation will be a revision to an existing regulation that has been codified in the CFR. If the regulation under development will occupy a new CFR section, there is no asterisk. If there is no CFR citation, the regulation has not yet been assigned a place in the CFR.
Legal Authority	A citation of the statutory authority under which the regulatory action is taken.
Reason for Including This Entry	A brief statement of the importance of the regulation under development.
Statement of Problem	A brief discussion of the problem that the regulation is addressing.
Alternatives Under Consideration	A brief description of the major choices the agency is considering to achieve its regulatory objectives.
Summary of Benefits	A discussion of the expected direct and indirect benefits of the regulatory action to the sectors of the economy, population, government, etc., that will be affected.
Sectors Affected	A listing of those sectors that may benefit as a result of the proposal.
Summary of Costs	A discussion of the expected direct and indirect costs of this action to the sectors of the economy, population, government, etc., that may be affected.
Sectors Affected	A listing of the sectors that may bear costs as a result of the proposal.
Related Regulations and Actions	A description of other regulations or actions, either within or outside the agency, that are related to the regulation under consideration.
Active Government Collaboration	The steps the agency is taking to coordinate the proposed regulation with any other Federal, State, or local agencies.
Timetable	A chronological listing of the future major steps which the agency will take to develop the regulation.
Available Documents	A list of major background documents related to the proposed regulation, and notice of where they may be obtained or read.
Agency Contact	The name, address, and telephone number of a person in the agency who can respond to questions about the proposed regulation.

FIGURE 5.1 Data requirements for proposed regulations to be published in the Calendar of Federal Regulations.

SOURCE: Federal Register, Vol. 45, No. 106, Friday, May 30, 1980.

- Watch for evidence of elitist attitudes (e.g., the "informed" regulator versus the "ignorant" public).

- Take note of any favoritism directed toward particular sectors of the public.

- Be aware of the bias that can arise in favor of intellectual argument and against "emotionality." All sides deserve an impartial hearing.

If you find yourself responsible for public participation, take honest stock of your own attitudes regarding the points made above. Remember: the stronger your public participation effort, the better will be your ultimate regulation, and the more resistant to litigation.

Planning for Public Participation

Start planning early! A comprehensive public participation effort is extremely complex because it involves many individuals, offices, and publicity tools. Planning and implementing events that involve the public can take as long as 7 months, and will never require less than 3 months. Your intial inter-office planning meeting is the point at which to establish the groundwork. While the embryonic regulation is under discussion, begin to formulate the objectives of the public participation effort, solicit ideas on the potential nature of public response, and sketch out a rudimentary plan to invite and address it. The public participation plan should be formally documented in the Early Analysis Plan (see Chapter 2), and no later.

Setting Objectives

What do you want from the public? It is vital to consider this question before making plans, as the answer will keep future efforts on track and head off tangential elaborations. Of course, objectives should be viewed as flexible, especially since information that you may discover during the process may make other objectives more appropriate. The following are examples only and are not mutually exclusive:

- To obtain public reaction to the proposed regulation

- To obtain public reaction to alternative approaches

- To obtain help in identifying key problems and issues

- To obtain help in formulating solutions and alternatives

- To obtain help in identifying the important environmental, social, economic, and cultural values that need protection and promotion

- To determine whether any one interest group will be unnecessarily burdened.

Apportioning the Effort

You will find it helpful to divide this complicated project into phases. The four that follow are typical public participation stages that support regulatory activity:

1. Identify the concerned public
2. Involve the public (through outreach and dialogue)
3. Evaluate feedback
4. Respond (by incorporating or refuting comments, revising the rule accordingly, and/or informing respondents).

Certain offices within DOE have public participation specialists on staff who can help you plan and implement your campaign:

- Consumer Affairs (IR-3)
- Education, Business and Labor Affairs (IR-4)
- Public Affairs (IR-6)
- General Counsel (CG-1)
- Regional or field offices (If your regulation will have localized impacts, these people can provide information and guidance relevant to the local Public Participation effort).

(More information on different offices and what they provide forthcoming.)

Before you seek help, though, consider the following questions within the lead office. Answers to some will provide initial direction to your effort. Areas of uncertainty will serve as starting points in your discussions with Public Participation specialists in other offices.

- Is your regulation going to be controversial? Your contacts both within DOE and elsewhere can help you find out what's in the wind.
- Who will be included among the "interested public?" Ideas on this topic must be generated early, so that mailing lists, meetings, etc. can be prepared.
- How many comments can you expect to receive? Five? Two thousand? The response will no doubt hinge on the nature of the regulation and its potential impact.

- Can you anticipate the nature of the response? Have you discussed the issue's impact extensively enough within your office that you are prepared to some degree for particular arguments or criticisms? (Are you at all prepared for praise?)

- Are you aware of the ex parte rules that limit informal discussions with interest groups outside the official comment periods? Of course you can't keep the public from commenting spontaneously, but you must document what is said.

- Have you considered all the alternatives for outreach to the public?

- How will you collate and address comments? Techniques vary with the volume of the response.

- Will you use contrators to help you if evaluation and response tasks are projected to be extremely weighty?

What Happens to Public Comments?

The answer to this question is unequivocal: public comments must be documented! Prepare a comment file before the first response is received (see "Evaluating Feedback," below). DOE personnel are strictly accountable for all contacts with the public, and all responses must appear in the public record. Thus, written comments are filed, public hearings are recorded or transcribed, and memos must be logged of all personal conversations that yield any new data or significant arguments. Once the record is complete, the comment data can be analyzed and responded to in a systematic way.

* * * * *

In order to keep this Guidebook brief, the rest of Chapter Five will only cover the main points of public participation. We will sketch ideas to be considered, mention possible tools, delineate requirements, and suggest resources. For further guidance, we strongly recommend that you consult the Office of Consumer Affairs' excellent handbook, the Citizen Participation Manual (DOE Order 1210.1). This short, readable book presents the details and policy of public participation.

One final piece of planning advice: forge alliances with other offices early in the regulatory process. Find out how much advance notice their staff members need to process your projects (hearings, public service announcements, etc.) in a timely way. You will benefit from the good will generated by your courtesy and foresight.

In the sections that follow, each of the four phases of public participation will be discussed. Mechanisms, techniques, resources, and suggestions will be presented for dealing with the special concerns of each phase.

But, do you have a game plan?

IDENTIFYING THE PUBLIC

Problem

It is impossible to identify all the individuals who will potentially be affected by a regulation. A cross section that represents the public at large must be sought.

Methods

Although the general public can be solicited for comment by means of mass media (electronic and printed), this method is inefficient and subject to control by the media themselves. Thus, you should not rely upon them as the sole means of disseminating information.

Complement this scattershot technique by working with the organized interest groups and with sectors of the public in particular regions that may be affected by the regulation under development. It is important to include as many interest groups as possible, thus gaining balanced input and perspectives. Consultation with a limited number of interest groups may not provide a clear picture of all of the comments to be considered. Examples are:

- Trade groups
- Consumer interest groups

- Environmental groups
- Minority associations
- Industrial lobbies
- Agricultural lobbies
- Labor organizations
- Public health associations
- Scientific and professional organizations
- Academic societies
- Civic groups
- Public officials.

The following resources can help you identify your public:

- DOE personnel who have contact with particular sectors of the public
- Office of Consumer Affairs
- Office of Education, Business and Labor Affairs
- Office of Public Affairs
- Regional and Field offices
- Other public officials (e.g., National Governors' Association Energy Committee)
- Associations with a nationwide membership
- Members of any DOE Advisory Committee that may be involved with the issue
- Newspaper stories from various regions on the issue.

Continually ask: What is the general mood surrounding the issues of the regulation? Which parties are apt to be affected or interested? Have special concerns been voiced? Once these questions have been answered from several perspectives, you should have that representative cross section of the public you were seeking. Only after that profile becomes distinct can you decide what kind of involvement techniques will be effective.

INVOLVING THE PUBLIC

Problems

Eliciting response from the public concerning regulations is a difficult task for many reasons. Most consumers find regulations difficult to read despite the improvements of the "plain English" requirement. The Federal Register isn't widely read. Awareness on the part of consumers regarding the relevance and economic costs of regulation is low, and this leads to indifference. Even where interest is keen, the costs of participation are high, and that discourages involvement.

Public hearings are potentially quite useful, but suffer various drawbacks. Their tone is often formal--even judicial--and this quality can be intimidating. Certain interest groups that are powerfully organized have distinct advantages in "making a good case." Their dazzling presentation can easily overwhelm opposing opinions, valid though they may be. Centralization of public hearings in urban centers, during working hours, effectively prohibits the participation of many. Interest groups that "know the ropes" have a decided advantage in gaining access to the information needed to prepare for the hearing.

You must help the public prepare to participate. Even the most civic-minded citizen has a host of other concerns, with which the appeal for regulatory assistance must compete.

Involvement Techniques

Once you have defined your public and established the objectives of your Public Participation plan, you can begin to plan the details of your publicity campaign. Choose the involvement techniques that will be most effective in eliciting from those affected the type of information needed to formulate the regulation. The six most common techniques used are:

- Public hearings
- Public meetings
- Workshops
- Committees
- Surveys and questionnaires (may require EIA and OMB approval)
- Receipt of written and oral comments.

Figure 5.2 presents more information on these methods of public involvement. If you plan to use one or more of them, the offices specified on the chart can provide further guidance. Also consult the Office of Consumer Affairs' Citizen Participation Mannual (DOE 1210.1).

FIGURE 5.1 Most common public involvement methods.

TECHNIQUE	CHARACTERISTICS	APPROPRIATENESS	ADVANTAGES	DISADVANTAGES	FOR GUIDANCE
PUBLIC HEARINGS	Formal meeting providing people with the opportunity to "go-on-the-record" with definitive positions, orally and in writing. Guided by strict rules with respect to notice, meeting conduct, and testimony.	When required by law or regulation. Usually held at some point near the end of the decisionmaking process. In addition to being held when required, may be appropriate in the development of major policies and plans.	The oldest technique of public participation, it is generally accepted (if not expected) by the public. Assures citizens the opportunity to challenge or support DOE proposals.	Presentation of fixed positions only. No opportunity for discussion or negotiation. Formal rules can intimidate people not used to them. Can polarize groups inasmuch as testifiers cannot discuss issues among themselves.	Office of Consumer Affairs Office of Public Affairs Office of Hearings & Dockets for CS General Counsel
PUBLIC MEETINGS	Large meeting, less formal than the public hearing. Considerably more flexibility in meeting formats. Participants not asked to take definitive positions; may be some "give-and-take."	Might be used prior to public hearings (or independently) to present information and/or permit participants to discuss issues. Might be held in several regions to obtain greater participation.	Can reach a large number of people at a single time. Can be held at any time in a process when information is to be presented and/or citizen comments are needed. Less intimidating than a public hearing.	Unless the meeting subject is highly important to the public, attendance may be sparce. Limited opportunity for interaction among participants because of size. May be dominated by vocal minorities.	Office of Public Affairs Office of Consumer Affairs General Counsel
WORKSHOPS	Any meeting (also called conferences or seminars) which emphasizes intense interaction among participants to get ideas (and their justification) out on the table. While workshops might have 50 to 50 people, interaction should be in smaller groups. Considerable flexibility in format	Useful in defining problems, developing and evaluating alternatives, discussing important issues, projecting future trends, negotiating positions. Require broad, balanced participation of interests.	Allow for intense interaction and concrete products (i.e., people can see what they accomplished). Relationships formed among participants and between them and DOE. Reduced chance of meeting dominance by vocal minorities.	Unless carefully planned and skillfully conducted, can be frustrating for all participants. May not be possible to get broad, balanced participation. Some groups may feel excluded.	?

FIGURE 5.1 Most common public involvement methods (contd).

TECHNIQUE	CHARACTERISTICS	APPROPRIATENESS	ADVANTAGES	DISADVANTAGES	FOR GUIDANCE
COMMITTEES	A group of people selected by DOE to advise it on policy and/or technical matters connected with a program or set of issues. May also do evaluations, and interact with a broader public. Subject to the Federal Advisory Committee Act, its implementing regulations, and DOE policy. Authorities must be clearly defined and agreed to by members and DOE.	Appropriate when DOE desires, over a period of time, the outside perspective of people affected by a program or set of issues. Require broad, balanced participation of interests. May be established as a continuing body or for a limited period of time to deal with a set of issues.	Participation by the same people over a period of time can ensure informed comments. Good opportunity for interaction among competing interests. Good chance to resolve hostilities over time. Prestige to the people selected as members. A regular group for DOE to "bounce things off of" without having to set up meetings and workshops.	With size limitations (usually not more than 20-25), may be difficult to select a broadly representative group. Sometimes, committees tend to spend more time on rules than substance. Other people may resent the fact that they were not selected. May be difficult to obtain approval for creating the committee because of Administration policy to discourage committees.	?
SURVEYS & QUESTIONNAIRES	Questions asked of people to determine their attitudes, values, perceptions, sentiments, problems, and reactions. May be done by survey (usually a set of multiple-choice questions administered to a random or preselected sample of people), or by questionnaire (usually an open-ended set of questions asking for narrative responses). For most instances of data gathering (where more than 10 individuals are involved), prior clearance is required from OMB.	Particularly useful when public opinion is important to the decisions to be made, and no current public opinion surveys give the necessary information. Also useful in validating or refuting public comments heard in meetings and from committees.	When properly designed and conducted, supply the needed public opinion. Potentially broadens the comments heard.	The design and conduct of objective surveys requires great skill and time--and is costly. No possibility of interaction among participants. Possibility of "uninformed" public and therefore "uninformed" answers.	General Counsel EIA, Div. of Survey & Statistical Design (OMB approval may be needed)
WRITTEN & ORAL COMMENTS	Opportunity for people to comment in connection with or independently of meetings. Various formats likely to stimulate comments.	When required by law or regulation (e.g., the comment period required in the development of any regulation, rule, or order). May also be appropriate to supplement other techniques to ensure that people can comment even when they cannot attend an event. In some cases, when the issues are not major, might be used independently.	Properly publicized, gives everyone the opportunity to participate. People may be "freer" to express themselves, uninhibited by group pressures.	No opportunity for interaction with DOE or other participants.	Office of Hearings and Docket for CS

SOURCE: Adapted from U.S. DOE, Office of Consumer Affairs (1979) Citizen Participation Manual, DOE 1210.1. August 13, 1979. Washington, D.C.: U.S. Department of Energy.

A wide range of other involvement techniques also exists:

- The Office of Consumer Affairs is building a mailing list (now at 25,000 names) that can be used for general distribution. A mailing list is also available from the Technical Information Center at Oak Ridge.

- Commercial mailing lists covering diverse categories can be purchased.

- If you have specific interest groups in mind, personnel in IR and the field offices may be able to help locate pertinent mailing lists. Organizational directories and further contact with groups identified through them can provide more leads.

- Public affairs officers in headquarters, regional, and field offices can help you implement the following types of publicity:

  - Extending personal invitations to contribute to representatives of key interest groups

  - Distributing news releases (contact the Office of Public Affairs 4 to 6 weeks before the event to discuss strategies)

  - Arranging public service announcements (contact Office of Public Affairs at least 6 weeks before the placement deadline to discuss arrangements)

  - Placing paid advertisements (ask Office of Consumer Affairs for assistance in evaluating and producing commercial ads. Allow at least 12 weeks for generating TV ads, 6 weeks for radio, and 4 weeks for newspapers.)

  - Delivering speeches to the public (the Speakers Bureau at headquarters or coordinators in regional and field offices can help select speakers and arrange forums)

  - Appearing on radio talk shows (contact public affairs offices in Office of Public Affairs or in regional and field offices to discuss audiences, advisability, and scheduling at least 4 to 6 weeks before the desired appearance.

  - Placing news stories in publications of other organizations. Write these to meet the editorial policy of each publication, and make sure information is factual, objective, and as interesting as you can make it.

  - Publishing information in DOE periodicals, such as the Consumer Briefing Summary (Office of Consumer Affairs, circulation about 20,000) and Energy Meetings (Technical Information Center, Oak Ridge, free to general public). Contact these offices for further information.

- Notifying Congressmen. General materials can be "personalized" by attaching correspondence and delivering them to the Hill. The Office of Congressional Affairs must handle such communications, and enough time must be allowed for the elected official to inform constituents.

- Announcing events in the Federal Register. The rulemaking process has several built-in requirements concerning publication in the Federal Register, and it is an appropriate vehicle for publicizing forthcoming Public Participation events. Remember though, that in the wide world beyond Washington, D.C. the Register is not considered popular reading material: don't use it as your sole means of publicity.

Remember to:

1. Broaden the base of public participation by seeking to involve the general public as much as possible.

2. Focus response by soliciting input from interest groups.

3. Consider, in conjunction with the Office of Consumer Affairs, whether invitational travel funds are appropriate and available.

4. Convey the message clearly, regardless of the medium used.

   - What are the issues and impacts?

   - What do you want the public to do?

   - Where and when will dialogue take place?

   - What will be the agenda?

   - How will public comment be used?

   - Where can interested individuals get more information?

5. Follow up initial notifications, especially by phone.

HELPING THE PUBLIC PREPARE

The better informed members of the public are on issues relating to the proposed regulation, the more useful their comments will be and the more likely they will be to get involved. Below we describe some of the written materials you can make available to the public to help individuals prepare to participate.

- Decision Documents and Reports - These are the full policy and decision materials used by DOE staff to support decision making. They are often ponderous, and may not be of wide interest. Still, enough copies should be available to meet the demand of interested parties.

- Summaries - Brief versions of the documents just mentioned, which highlight their main points, are valuable instruments for informing the public.

- Fact Sheets - These summarize the factual (rather than the value-laden) information on issues. They are most effective for presenting highly technical information in an assimilable format.

- Issue Papers - These materials should pose the problem confronting the Department and the public, discuss the environments in which the problem arose and in which it can be solved, and describe alternative solutions and the known effects of each.

- Background Papers - These papers, commonly published in the Federal Register as preambles to rulemaking notices, explain the intent of the proposed regulation and how DOE arrived at the position it suggests.

In supplying "briefing materials" to the public, remember to:

- Be objective in presenting the situation.

- Convey a sense of flexibility and receptivity with regard to public opinion.

- Be brief--many people want to learn the facts in 15 minutes or less.

- Write clearly and simply: avoid bureaucratic jargon, and replace polysyllabic words with short ones.

- Make detailed source information available.

- Give people plenty of time before the comment period to read and reflect upon the material.

- Assure wide distribution, and also publicize the availability of the information.

EVALUATING FEEDBACK

Problem

The evaluation of comments calls for problem solving across a wide range of concerns: the logistics of collating the response, methods for organizing opinions, judgments of validity, rationale for distilling general trends from individual opinion, and determination of how adequately the Department can satisfy public desires. You will be receiving feedback via various avenues, depending upon the techniques you used for outreach. Transcripts from meetings, responses from surveys and personal conversations, and receipt of written and oral comments must all be documented in the comment file that is opened before the first response is received from the public.

Nature of the Response

Public comments will characteristically fall into one of three categories: questions, facts, and opinions. Questions can be answered and facts validated fairly easily. It is the area of opinion--and most comments are of this nature--that is hardest to address.

Some respondents will given reasons for their opinions; others will not. However, unsupported opinions are just as much a reflection of public attitudes and desires as are those that are substantiated. Underestimating their validity may cause you to badly miscalculate the nature of public sentiment.

A knowledge of the participant's residence, constituency, and expertise, any of which may be conveyed by hints or statements in the comments, may help you to analyze the nature of the response.

Volume of the Response

Whether public comments come flooding or trickling in depends on the efficacy of your public participation effort and the importance of the proposed regulation as perceived by the public, as well as many other human factors. If you've done some good preplanning, you may be able to project, at least roughly, the volume of the response. If it is expected to be large, you must prepare for the sheer physical handling of comments.

Contact the Office of Hearings and Dockets (OHD) before the first comment period is to begin to arrange a docket for receipt of comments. Your NOI, ANOPR, or NOPR must instruct the public on where to send comments: be sure to include the docket number. OHD will stamp incoming responses in numerical order, log them, and circulate copies.

From 100 to 200 comment documents can probably be processed manually, depending on your staff, your budget, and time constraints. There are many manual techniques for handling comments, including:

- Matrixes
- File card systems
- Interleaving comments at appropriate points in regulation text
- Charts

Regardless of how the comments are handled, a method of categorizing the responses must be devised and implemented as they begin to accumulate. Seldom is this categorization as simple as "pro" and "con" slots. Many issues will be raised, and it is quite an analytical task to pick out of each response the substantive points and then relate them to other points distilled from previous responses. If the comment burden is heavy (many hundreds or thousands of responses), you may need help from contractors, computers, or both.

EVALUATING THE RESPONSE

Little general advice can be provided on this topic; so much depends upon the nature of the regulation, the volume and tenor of the response, the methods chosen for handling information, the degree of technicality involved, etc. The best rule to apply is this: strive for objectivity and fairness. This is the point at which subtle prejudices creep in, in favor of the "rational" and the scholarly, for example. Careful interpretation is very important.

Presenting Feedback Within DOE

A suitable framework must be devised for working with the commentary once it has been processed. Other interested parties within DOE, including high-level staff whose concurrence is required, will want to review the results of the evaluation effort. You can present them in one of several ways:

- Preparing a Written Summary - Once all comments have been reviewed and summarized, a narrative highlighting the main issues is prepared.
- Listing All Comments - Each comment is summarized and categorized. The speaker may be identified, and space can be provided for a response to each comment. Because many comments, once summarized, are found to be virtually identical to others, this task is not as laborious as it might first appear.
- Providing the Full Record - Full transcripts or entire comment files may occasionally be provided to decision makers as back-up material to the summaries described above.
- Conducting a Briefing - An oral presentation, in which questions can be immediately answered, is often an effective way to convey public comment ideas to other officials.

RESPONDING

Problem

People need help in connecting the comments they have made with revisions in the rule, or with a generalized rationale for rejecting comments. The categorization and summarization processes that lead to final adjustments obscure individual input.

Focus of Response

Responding to citizens' comments involves two areas of endeavor, one generalized and the other more specialized. They are:

- Adjusting the regulation
- Reporting back to respondents.

The preamble to all final rules published in the Federal Register must contain a summary of public comments and the way in which they affected the development of the regulation. If ideas and opinions were rejected, this decision must be justified. For those that were factored in, an explanation of their effect must be provided. If the decision was made that is highly controversial, and conflict remains, that fact should not be hidden. Instead, the rationale leading to the decision should be clearly explained.

It is easy to see how the use of comment summaries to write generalized arguments against or rationales for changing the regulation leads to a final product that lacks detail. Even though the comments have been painstakingly integrated to reflect all variations, the respondent will probably have trouble pinpointing his or her own opinion within the text.

Even if every comment were to be addressed and printed with the final regulation, not every respondent will read about it in the Federal Register. It is important to follow up public participation by reporting back to citizens in other ways. You can:

- Make final rules available to those who have commented.
- Send copies of the comment summaries developed at various stages to respondents. These should also contain DOE's responses.
- Publish the key issues in newsletter stories that are likely to reach the general public (e.g., the Office of Consumer Affairs' Consumer Briefing Summary).

- Use regional and field offices as "grass roots" links with the public. If decisions based on public comment are delayed, keep interest high by informing the public about the progress of the regulation.

Once the final rule is promulgated, don't forget to file all documentation. Public comment must be kept by the Office of Hearings and Dockets for 8 years after publication of the final rule!

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CHAPTER SIX
EVALUATION OF EXISTING REGULATIONS

THE IMPORTANCE OF EVALUATION

Evaluation is a powerful tool for achieving a more workable regulation as well as for monitoring its implementation and effectiveness. Evaluation plans are also a requirement. Executive Order 12044 specifically requires "a plan for evaluating the regulation after its issuance has been developed" for all significant regulations.

The incentives for evaluation in connection with your federal regulatory program include the desire to achieve the overall objectives of the program and the desire to improve program performance.

OBJECTIVES

The evaluation process, and specifically the evaluation plan, will be the tool with which you and your management can assess the impact of significant regulations once they are promulgated and implemented. As you develop the evaluation plan, keep in mind the overall objectives of this ongoing activity:

- The evaluation planning process should provide a framework for describing and assessing regulatory alternatives and the assumptions and expectations underlying the alternatives.
- The evaluation planning process should provide a basis for determining the usefulness and validity of any prospective regulation.
- The evaluation planning process should ensure that a method for improving the management and implementation of regulation is built into the regulatory program.
- Each evaluation planning process should provide the opportunity to determine the effectiveness of different regulatory methods.

Once the regulation has been promulgated and implemented, the regulatory evaluation plan becomes your work plan for evaluation activities.

Critics of evaluation state that evaluations rarely lead to actual improvement in program performance; evaluations are often too slow to produce timely recommendations or results; regulations often ask the wrong questions or evaluations begin with inadequate comprehension of the problem to be addressed by the regulations. Therefore, if evaluation is to be effective, start the

process early (briefly design the evaluation plan as part of the Analysis Plan) and commit your time and hopefully that of others in your office to following it through.

SUCCESS?

A successful evaluation will answer the following questions:

- Are the regulatory objectives still valid or are changes necessary?
- Does the regulatory program encourage the desired response from industry, the public, etc.?
- How has it affected change?
- Has the change in e.g., public behavior and industry practice adequately resolved the original problem?
- Is the regulatory burden appropriate?
- Was the benefit greater than the cost?
- What improvement can be made to better manage and implement the regulation?

FOUR ELEMENTS OF THE EVALUATION PLAN

The evaluation plan should be organized under four broad sections:

(1) Determine Goals and Objectives:

- Identify the specific legislative, program and agency goals for the regulaton

(2) Identify Performance Criteria:

- Develop a set of "measurable" criteria for each goal
- Criteria will be both quantitative and qualitative
- Identify data needs for each criteria

(3) Analyze Performance

- Compare the regulatory goals and objective against program activities and progress
- Analyze both process and program impacts

(4) Provide Feedback

- Establish mechanism for reporting evaluation information to Department of Energy decisionmakers

- Isolate issues in need of resolution.

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APPENDIXES

APPENDIX A: GLOSSARY

GLOSSARY

1. Action Coordination and Tracking System (ACTS):

   This system is used to coordinate and schedule various actions, including: Notices of Inquiry (NOI), Advanced Notice of Proposed Rulemaking (ANOPR), Final Rules, internal planning documents studies and reports. An ACTS form is filled out early in the regulatory process with such information as milestones and target dates, a title and summary of the purpose of the action, the legislative or other authority for the action, and the anticipated mangement concurrence chain (see Chapter Two for more detail).

2. Action/Authorization Memorandum

   This is a document submitted to the Secretary or Deputy Secretary before the development or drafting of a significant proposed or final regulation or any public notice concerning possible significant regulations. The General Counsel and the Office of Policy and Evaluation shall review the memorandum. The memorandum should include: a description of the problem, a discussion of the need for action, a discussion of major alternative regulatory and non-regulatory solutions to the problem, a preliminary assessment of whether a regulatory analysis should be prepared, proposed methods for receiving public comments, and a proposed schedule (see Chapter Two for more detail).

3. Advanced Notice of Proposed Rulemaking (ANOPR)

   This is a preliminary publication in the Federal Register intended to give early public notice that a rule is being considered. An ANOPR invites interested persons to participate in deciding whether a rule is needed and, if so, what the rule should provide. An ANOPR follows a Notice of Inquiry (NOI) and precedes the Notice of Proposed Rulemaking (NOPR) (see Chapter Two for more detail).

4. Analysis Plan (AP)

   This is a document to be prepared in conjunction with the Action/Authorization Memo (as an appendix or stand alone) to identify analysis requirements, (Environmental Assessment or Impact Analysis, Regulatory Analysis, or Urban and Community Impact Analysis)

by analysis issues, key policy alternatives, and a schedule for preparing the documents (see Chapter Two for more detail).

5. Base Case Alternative ("No-Action")

   This is one of the first steps in the analysis for estimating impacts from regulations. The base case is a projection of relevant variables into the future as if there were "no federal action." The base case should include an estimate of all variables that could be affected by the policy alternatives under consideration for every period that they could be affected. The base case provides a benchmark to rank the relevant policy alternatives (see Chapter Three for more detail).

6. Emergency Regulations

   Similar to an interim final rule, an emergency regulation responds to a problem imposing severe consequences, requiring an immediate response. The basic guide for deciding to implement an emergency regulation is, "Does the public interest require immediate action?" Examples of potential situations requiring emergency regulations include a postal strike, a coal miner's strike, or in the event of war. Emergency regulations are issued very seldom, and with the understanding that although imperfect, they are necessary to the welfare of the public.

7. Environmental Assessment (EA)

   This document assesses whether a proposed DOE action would be "major" and would "significantly affect" the quality of the human environment, and serves as the basis for determining whether an Environmental Impact Statement (EIS) is required.

8. Environmental Impact Statement (EIS)

   This is a document prepared in accordance with the requirements of Section 102(2)(c) of the National Environmental Policy Act (NEPA).

9. Executive Order 12044 (E.O. 12044)

   This order was issued 24 March 1978 and directed all executive agencies to adopt procedures to improve existing and future regulations (see F.R. Volume 43, No. 50, Friday, March 24, 1978).

10. Executive Order 12074 (E.O. 12074)

    This order requires that an Urban and Community Impact Analysis (UCIA) be incorporated into the Regulatory Analysis (RA) required under E.O. 12044.

11. Executive Order 12174 (E.O. 12174)

This order requires all agencies to eliminate all paperwork burdens on the public above the minimum necessary to implement public policies and ensure compliance with federal laws.

12. Federal Register Document (F.R.)

Any rule, regulation, delegation, order, notice or similar document intended or required for publication in the Federal Register.

13. Interim Final Rule

Any interim final rule is almost always used in those circumstances when an issue is so critical that a regulation must be written immediately. If the critical nature of an issue (i.e., gasoline shortage) demands immediate action, without benefit of a full public comment period, then an interim final rule is issued after an abbreviated public comment period. The rule must be adhered to as though it were a final rule, but with the understanding that it is "for the time being" and that additional public comments and hearings will follow. The lead office essentially says, "We can still meet the needs of the general public in this short amount of time, and amend it later if necessary." Another example of interim final rule use is when a lead office is trying to meet a statutory deadline.

14. Notice of Inquiry (NOI)

This is a preliminary publication in the Federal Register intended to provide early public notice and to request public comment about a rule, program, or study being considered.

15. Notice of Proposed Rulemaking (NOPR)

This is a publication in the Federal Register of the text or substance of a proposed rule and an invitation to the public to comment on the proposed rule. If a Regulatory Analysis (RA) is being prepared, a summary of the draft RA is included for publication with the NOPR. The NOPR should indicate the form of public comments (oral or written) desired and where and when they should be submitted.

16. Nonregulatory Policy Alternatives

This is a category of federal policies that can be implemented to substitute for regulatory programs. This category includes economic incentives and disincentives like loan guarantees, price supports, and tax penalties and credits; information programs like product labeling and community participation; and any other policy that seeks to influence the market.

17. Preamble

The preamble is a public document published in the Federal Register with the proposed regulation. The preamble should provide a clear, succinct statement of the purpose of the regulation and its relationship to other regulatory programs; explain what the regulation does; and demonstrate that the particular course of action chosen is the least burdensome and most effective method to accomplish policy objectives.

18. Regulation or Rule

Both are legal terms that describe all or part of an agency action designed to implement, interpret, or prescribe law or policy or that describes an agency's organization, procedures or practice requirements. The term "regulation" is sometimes applied to a rule that has been published in the Code of Federal Regulations (CFR).

19. Regulatory Policy Alternatives

This is a category of federal policies that includes such actions as performance standards, specification standards, wage, price or profit limitations, or information reporting requirements. Because regulatory policy alternatives always require rules and regulations to be implemented, informal or formal rulemaking procedures are required.

20. Regulatory Analysis (RA)

This is an analysis document required by E.O. 12044 for rules or regulations that are deemed significant and that impose major economic consequences for the general economy, individual industries, geographic regions, or levels of government. Also, an RA may be required for any rule or regulation at the discretion of the head of the agency (for more detail see Chapter Three).

21. Urban and Community Impact Analyses (UCIA)

This analysis document, required whenever an RA is required, focuses on the impact of a regulation on employment, population, fiscal status, and other relevant factors as they affect cities, suburbs, and outlying rural areas.

APPENDIX B: ALTERNATIVE POLICY OPTIONS

It is crucial to remember that the fundamental purpose of a regulatory analysis is to conduct a careful examination of alternative approaches early in the decision making process. In fact, the most frequent criticism by regulatory review groups such as OMB and RARG is that alternatives are usually considered inadequately, or are considered "after the fact" as a justification for past decisions rather than as an aid to current decisions.

In some cases, CS program managers find that the range of available alternative federal actions is limited somewhat by the relevant statute. In the presence of such limitations it is still important to examine alternatives, because if it is found that additional flexibility in the statute would allow CS to achieve Congressional objectives more efficiently, such recommendations should be included in DOE's legislative program.

When preparing a regulatory analysis, four categories of alternatives should be considered:

- alternative federal actions for accomplishing policy objectives
- alternative stringency levels for these actions
- alternative implementation strategies
- alternative enforcement strategies.

The first category is very critical since the selection of the type of action often determines how stringent that action must be, how best to implement it, and what compliance problems to expect.

The second category is particularly important to consider when the range of alternative federal actions is limited by the relevant statute. If Congress mandates a specific regulatory approach, it is still important to examine alternative stringency levels for that regulation.

The third and fourth categories must be considered for each action. Implementation and enforcement are often overlooked in regulatory analyses but are crucial to the ultimate success of an action and must be analyzed.

A wide range of alternative federal actions is listed below. A brief discussion of each alternative, as well as examples to illustrate how to consider alternative stringency levels, implementation strategies, and compliance strategies follows.

Alternative Federal Actions Appropriate for CS

- Rely on Market Forces
  - "No-action" alternative

- Governmental Requirements
  - Performance Standards
  - Specification Standards
  - Price and Profit Regulations

- Economic Incentives/Disincentives
  - Tax Credits
  - Loan Guarantees
  - Price Supports
  - Grants
  - Low-Interest Loans
  - Guaranteed Purchases
  - User Charges, Fees
  - Liability Measures

- Information
  - Labeling
  - Public Information Programs
  - Information Reporting Requirements
  - Advertising

- Innovative Approaches
  - Marketable Permits

RELY ON MARKET FORCES

This type of alternative is crucial to consider for several reasons. For one, when conducting a regulatory analysis, a baseline scenario should be established so that impacts (on policy objectives, on the economy, on the environment, on cities and communities, etc.) from alternative actions can be compared on a common basis. In most cases, the baseline scenario is used as a benchmark for comparing alternatives and considers the effects of no federal action.

Another reason to consider the "no-action" is that analysis may prove that the best course to accomplish policy objectives is to let the market solve the problem. The program manager would monitor market trends to ensure objectives are met and to be prepared to take action if market forces did not solve the problem.

Finally, a "no-action" baseline should be examined to ensure that adequate data about actual market conditions and trends are gathered. Too often, the information about market conditions contained in the "no-action" baseline is not sufficient for reasonably comparing that baseline to alternative programs.

GOVERNMENT COMMANDS AND REQUIREMENTS

Major examples of government commands and requirements include performance standards, specification standards, price and profit regulations, and information reporting requirements. These actions differ from the others in the list in that they seek to change behavior through direct government action. Presently, CS has limited experience with the last two examples.

Examples of the performance standards approach are prominent in CS. Energy performance standards for new residential and commercial buildings and for 13 major appliances are currently under development. Performance standards are distinguished by the fact that they mandate results without specifying how these results are to be achieved. This fact makes identifying alternative stringency levels a more simple task of varying the mandated outcome.

Specification standards, on the other hand, require the use of certain practices or technologies without prescribing results from their use. Regulations of this type are far more common in the health and safety area (e.g., required installation of seat belts in automobiles) than in the conservation and solar energy area. However, BEPS could have been a prescription standard. In this case, the standard would have required certain levels and types of building construction. For example, specified amounts of insulation and types of windows. As a performance standard, these were not required.

ECONOMIC INCENTIVES/DISINCENTIVES

Economic incentives or disincentives are distinguished by the fact that they rely on market-based solutions to problems by altering the costs and benefits of various activities to firms and to the public.

Tax incentives (credits) and tax disincentives (user charges, fees) comprise a class of federal actions not readily available to CS program managers as they require Congressional authority. However, analyzing these alternatives could lead to their inclusion in DOE's legislative program. Even where energy conservation or solar tax legislation exists, the programs are likely to be administered elsewhere. For instance, the income tax credit for the energy home improvement program is administered by the Department of Treasury.

Various taxation policies can be implemented in situations where conventional wisdom might dictate a regulatory approach. For example, manufacturers of home appliances could be taxed for products with energy consumption above some level. As this tax were passed on to the final consumer, it would serve as a disincentive for purchase of high energy using appliances.

Such federal actions as loan guarantees, price supports, low interest loans, grants, and guaranteed purchases can all be classified as financial subsidies to encourage private sector activities in particular areas. Common examples within CS include the Price Support Program for Municipal Wastes, the Appropriate Technology Small Grants Program, and the Electric Hybrid Vehicle Loan Program, to name a few.

All subsidy programs are composed of administrative rules which define qualifying criteria. These rules are subject to the same "notice and comment" procedures as regulations and are subject to the requirements of Executive Order 12044.

Liability measures are a less common form of economic incentives and disincentives and include such actions as law suits, compensation funds, and insurance schemes. One prominent example of a compensation fund is the new "Super Fund" legislation, which requires certain manufacturers of hazardous materials to contribute revenues to a fund to compensate victims. An example of an insurance scheme is the Price-Anderson Act, which was passed in 1958 to establish a liability sharing arrangement between the federal government and the electric utilities to promote the development of nuclear power. Similarly, CS could promote wind power by assuming liability for windmill blades.

INFORMATION

This class of federal actions includes all measures which attempt to change public behavior through education programs. In many instances where the policy objective is simply to inform the public, information programs can stand alone. In other instances, information programs can complement regulatory programs or economic incentives/disincentives to more efficiently accomplish policy objectives.

Consumer product labeling programs to influence buying habits have received considerable attention as a means of conserving energy. FTC currently has a mandatory appliance energy efficiency labeling program. Such labels for air-conditioners and automobiles already exist. A few states have implemented energy efficiency labeling programs to apply to residential homes and apartments.

Some public information measures attempt to go beyond labeling to bring policy objectives directly to the public's attention. CS examples of such measures include the Energy Extension Service, the Residential Conservation Service, and the Energy Measures and Audits Program.

Information and reporting requirements are another type of regulation used by the federal government primarily for gathering data. DOE operates many programs of this type within the Energy Information Administration. One prominent example within CS is the Industrial Reporting Program, which monitors the progress of energy conservation within the most energy intensive industries.

Persuasive techniques refer to efforts by the government to persuade the public to take some action. This differs from a purely informational approach which only attempts to supply information. TV advertisements to encourage people to conserve energy would be an example of jawboning in the energy area.

The feature common to most information programs is that they seek to inform the public but allow the public to make choices on their own. This

means that information programs can be implemented in a vast variety of ways. They can be implemented centrally or locally or through some mix of both. And, they can be targeted to specific audiences or relayed through the mass media.

INNOVATIVE APPROACHES

This class of federal actions is a mixed bag of alternatives that have been widely discussed but rarely, if ever, implemented. We will use marketable permits as our example of this category. Marketable permits are devices that allow individuals or firms to engage in some activity only if they have purchased the right (permit) to do so. Since a limited number of permits are issued, authorities regulate the amount of the activity allowed. White market gas rationing coupons are an example of this type of federal action in the energy area. Another application could be the issuance of marketable excess energy consumption permits to industrial firms.

Marketable permits are particularly easy to implement. The marketability of the permits allows flexibility on the part of compliers within the constraint of a fixed aggregate level. Also, this alternative would provide the incentive for those firms that can reduce activity (e.g., energy consumption) at low cost to do so while at the same time allowing those firms for whom energy conservation would be expensive to purchase the permit and continue high energy consumption.

APPENDIX C: MODEL SUMMARIES

PETROLEUM ALLOCATION AND DISTRIBUTION MODEL (PAD)

- This model identifies the optimal refining and distribution patterns of petroleum products. PAD is designed to analyze the impact of any supply interruptions on the petroleum productions system and determine the most efficient way to distribute products during a supply shortfall.

- PAD divides the United States into five regions. Each region is assessed in terms of its capacity to produce crude oil and natural gas liquids, refine them into petroleum products, distribute the products to meet demand, and use imports and stock drawdowns to prevent product shortfalls. The model is applicable to all sectors of the economy that consume petroleum products and covers a time period of 2 to 3 years.

- References: "Short-Term Petroleum Distribution Model: Methodology Description," Technical Memorandum, TM/ES/79-10, forthcoming.

STRUCTURAL RESIDENTIAL ENERGY USE MODEL

- The purpose of this model is to simulate energy use in the residential sector, forecast the demand for energy by that sector, and describe how that energy is divided among the principal household end uses of energy. The model takes into account behavioral characteristics (including elasticities), household number and size forecasts, changes in the stock of energy-using equipment over time, and the engineering models of home energy use.

- There are two versions of this model; one generates national data and one generates data for each of the ten DOE regions; annual figures are projected through the year 2000 for each version. The fuel types covered are natual gas, electricity, oil, and others. Three types of housing (single-family units, apartments, and mobile homes) and eight end-uses (space heating, water heating, refrigeration, freezing, cooking, air-conditioning, lighting, and other) are considered.

- References: E. Hirst et al. An Improved Engineering-Economic Model of Residential Energy Use. Oak Ridge National Laboratory, ORNL/CON 24, July 1978.

STRUCTURAL COMMERCIAL ENERGY USE MODEL

- This model forecasts annual energy use in the commercial sector by building types, five end-uses, and four fuel types. Economic factors (fuel prices, growth of energy using using stocks) are combined with technological factors (equipment efficiency, thermal characteristics of buildings) to determing the commercial sector's demand for four fuel types (gas, electricity, oil, and other), by five end-uses (space heating, water heating, cooling, lighting, other), in ten commercial subsectors (retail and wholesale, automobile repair, finance and other office activities, warehouse activities, public administration, educaton services, hospitals and health facilities, religious services, hotels and motels, and miscellaneous commercial activities).

- Two versions of the model are available; one national version and one for the ten DOE regions. Annual data are available through the year 2000.

- References: J. Jackson and W. Johnson, Commercial Energy Use: A Disaggregation by Fuel and End Use. Oak Ridge National Laboratory, ONRL/CON-15, April 1978.

INDUSTRIAL SECTOR ECONOMETRIC MODEL (ISEM)

- This model is intended to provide estimates of the responsiveness (elasticity) of major energy source use in the industrial sector to projected regional prices and value added for manufacturing industries.

- ISEM is disaggregated by major industries and DOE regions. The energy sources included in the model are coal, distillate oil, residual oil, liquefied gas, natural gas, and electricity. The model provides forecasts for the next 6 to 19 years, in 5-year increments, currently 1985, 1990, and 1995.

- References: Rama Sastry, Memorandum to File, July 1978.

  Frank Emerson, "Summary of Generation of Data Set for Industial Energy Use Statistical Runs, Together with Reference Note," draft Notes, December 1978.

INDUSTRIAL FUEL CHOICE ANALYSIS MODEL (IFCAM)

- IFCAM is an industrial energy demand model that evaluates fuel choice decisions in the industrial sector and sensitivity of such decisionsto governemnt policies. The model considers boilers and process heat energy in nine industry categories and uses life-cycle cost competition to determine fuel consumption by each category of industrial energy use.

- This model reports data for each of ten national regions and is set up to provide forecasts for 1985, 1990, and 1995. The basic fuels considered are industrial coal, residual oil, distillate oil, and natural gas.

- References: IFCAM (formerly CUMIS) has been developed by Energy and Environmental Analysis, Inc. Documentation is available in "Industrial Fuel Choice Analysis Model," Energy and Environmental Analysis, Inc., January 1979.

INDUSTRIAL SECTOR TECHNOLOGY USE MODEL (ISTUM)

- The Industrial Sector Technology Use Model simulates industrial technology and fuel choices between conventional technologies and new fossil, conservation, and renewable resource-based technologies. The model incorporates all industrial energy uses (disaggregated into 23 functional use categories) within 26 industries. ISTUM can be run to evaluate a single technology within a service sector (e.g., steam, clean direct heat), or industry, or to simultaneously evaluate all technologies in all industries.

- Annual national projections are provided through the year 2000. Exogenous inputs to ISTUM include prices for gas, oil, coal, and electricity and levels of industrial activity.

- References: ISTUM has been developed by Energy and Environmental Analysis, Inc., under the direction of Robert Reid. Its development has been funded intially by ERDA's Industrial Working Group and subsequently by the Division of Fossil Energy and the Office of Industrial Conservation within DOE. Documentation was completed in June 1978.

TRANSPORTATION SECTOR MODEL

- The transportation model is used to forecast the demand for gasoline to be used in automobiles. It is also intended to determine what effect the FPCA Standards will have on gasoline demand (via fleet efficiency) and what effect gasoline prices will have on gasoline demand in the future. The model describes consumer choices about automobile ownership and utilization, and accounts for the resulting stocks of automobiles and the fuel efficency of that stock.

- This model is based on new car sales, vehicle miles traveled, and the weighted average of efficiences of automobiles from various vintages. Automobile gasoline demand is then estimated as the ratio of vehicle mile traveled to stock efficiency. Annual national forecasts are provided through the year 2000.

- References: none

STATE-LEVEL TRANSPORTATION ENERGY DEMAND MODEL

- The State-Level Transportation Energy Demand Model is being developed to provide regional forecasts of gasoline use in the transportation sector. The model will describe the nation's changing automobile fleet, its fleet efficiency, fleet mix of vehicles by characteristics, and vehicle utilization.

- The input data for this model is expected to include population, households, disposable income, urban and rural vehile miles of travel, congestion factors by State, average travel speeds, and unemployment. The model will provide annual data for each State over the next 10 to 15 years.

- References: David L. Greene, "Econometric Analysis of the Demand for Gasoline at the Stae Level," Oak Ridge National Laboratory, ORNL/TM-6326, July 1978.

REGIONAL ENERGY DEMAND FORECASTING MODEL (RDFOR)

- This model forecasts quantities of fuel demanded by region as a function of prices, macroeconomic variables, and population. In addition, the model can be used to assess the impact of changing energy prices and economic growth trends on the level and composition of fuel demanded. Since both energy prices and macroeconomic data are exogenous to the model, it is possible to develop own and cross price elasticities and perform sensitivity analyses on the macroeconomic variables.

- RDFOR forecasts data for each of the ten DOE regions annually, to 1995. The model covers fuels used for heat and power in the residential, commercial, and industrial sectors. It also covers transportation fuel demand across all end uses and the demand for raw material feedstocks and specialty fuels as a function of economic activity in the industries in which they are most commonly used.

- References: Three unpublished volumes of documentation are available on the RDFOR forecasting model. The first volume covers the theoretical structure of the model and its simulation characteristics. The second volume is a user's manual and provides an explanation of the FORTRAN IV software code used in solving and simulating the model. The third volume is a supplement which lists the input data by region.

SIMULATION OF SOLAR SYSTEM PERFORMANCE AND MARKET PENETRATION MODEL (SOLARSIM)

- This model is used to design "optimum" solar water and space heating systems for residential and simple commercial buildings and calculate market penetration by these systems in appropriate market sectors under various incentive programs.

- National and regional level detail are available for each fuel replaced (oil, natural gas, and electricity). Outputs describing the performance of individual installations are available monthly or annually over expected lifetime of the installation. Outputs describing market penetration (for each building type and geographical region) are available on an annual basis from 1977 through 1990).

- References: "FCHART Program Documentation," Orkand Corporation, TR-77-022, March 1977.
"FCHART Instruction Manual," Orkand Corporation, TR-77W-037, April 1977.
"SOLARSIM Operations Manual," Orkand Corporation, TR-77W-061, July 1977.
"SOLARSIM Specifications Manual," Orkand Corporation, JTR-77W-060, July 1977.

SOLAR MARKET DEVELOPMENT MODEL

- This model is a computerized simulation of solar energy penetration in the residential and commercial heating (including hot water) and cooling market. The principal objective of the model is to evaluate the impact of changes in solar costs and benefits under vaious kinds of incentive programs.

- This model evaluates the potential market for solar heating and cooling at various detailed levels, including ten regional areas, ten building/market types (residential, commercial, and institutional), two applications (retrofit and new construction), three solar options (water heating, space and water heating, and air conditioning with space and water heating), and seven alternative fuels. Outputs describing market penetration for each building type and geographical region are available on an annual basis from 1977 through 1990.

- References: Arthur D. Little, Inc., Solar Heating and Cooling of Buildings (SHACOB) Commercialization Report: Part B, Analysis of Market Development. NTIS-HCP/M70066-01/1, 01/2, 01/3.

SYSTEMS FOR PROJECTING THE UTILIZATION OF RENEWABLE RESOURCES (SPURR)

- The SPURR model and energy data base are used to examine the likely impact of future fuel costs, incentive programs, energy demands, solar and competing technology costs, and market acceptance of solar energy options upon the utilizaton of renewable resources.

- This model covers four major market sectors (heating and cooling of residential and commercial buildings, agricultural and industrial process heat, centralized electricity generation, and synthetic fuels and products. The technologies currently represented in the data base are wind energy conversion systems (WECS), solar thermal central receivers, photovoltaic central power systems, ocean thermal energy conversion (OTEC), and direct combustion of biomass. Annual data are available from 1975 through 2000.

- References: The SPURR Model: A System for Projecting the Utilization of Renewable Resources. The MITRE Corporation.

METROPOLITAN AND STATE ECONOMIC REGIONS MODEL (MASTER)

- The purpose of this model is to provide a regional economic and demographic projection that is sensitive to changes in energy prices. MASTER uses industrial location as a principal determinant of income, employment, and population movements. When completed, this model will be used to provide regional inputs for national and regional energy demand models and also to analyze the regional economic impacts of changes in energy-related factors.

- The basic geographic unit used by MASTER is the SMSA, rest of state. The model will provide annual projections for the mid-term and long-term. The model is based on data from 1967-1977 and contains a highly disaggregated construction submodel for the residential and commercial sectors.

- Reference: M. J. Scott, R. C. Adams, F. J. Haskins, S. J. Staloff, "MASTER Model Specification: Small Scale Model," April 1981.

DATA RESOURCES, INC., QUARTERLY ECONOMETRIC MODEL OF THE U.S. ECONOMY (DRI MODEL)

- The DRI Model is a representation of the U.S. economy. The model forecasts detailed breakdowns of consumer spending; business investment in plant, equipment, and inventories; construction activity, government receipts and expenditures; wages, profits, and interest; major price indexes; and imports and exports. Financial projections, such as interest rates, monetary aggregates, household and corporate flows of funds, and mortgage activity, are also included.

- This model includes national data for the short-term (up to ten quarters) and for the long-term (through 1990). The model includes data on the personal consumption of gasoline.

- References: The current version of the DRI Model is documented in the DRI publication "U.S./Macro Model: Model Description," December 1977.

MULTIREGIONAL INPUT-OUTPUT MODEL (MRIO)

- The MRIO has been designed to provide a capability to capture interregional feedback effects from one State (region) to another. It provides an additional component of indirect effects. The MRIO also serves as an extensive regional economic data base for multiplier impact analysis. It describes how final demand in each State is met, distinguishing between direct and indirect inputs and between locations of supplying industries.

- The current MRIO describes sets of interindustry transactions (79 industrial sectors) and trade flows among the 50 States and District of Columbia. The model includes data on coal mining, crude petroleum, natural gas, electricity, and gasoline. A 1-year time frame is used to describe the types of interstate impacts that the model depicts.

- References: Karen R. Polenske, Carolyn W. Anderson, and Mary M. Shirley, A Guide for Users of the U.S. Multiregional Input-Output Model, National Technical Information Service, U.S. Department of Commerce, NTIS-PB-242-558/5ST, 1974.

REGIONAL EMISSIONS PROJECTION SYSTEM (REPS)

- This model was designed to provide insights into regional patterns of air pollution emissions under various energy, economic, and environmental assumptions. The REPS model does this by estimating the regional emissions of five different kinds of air pollutants and determining the effect upon emissions due to the 1) retirement of present facilities, 2) reduction in emissions of new facilities based on State environmental standards, 3) construction of new facilities with emissions at appropriate levels, 4) fuel switching, and 5) conservation.

- The model covers 243 Air Quality Control Regions (AQCRs) and their aggregrates in the United States. Projections are available from 1985 to 2000 for user-specified years.

- References: E.H. Pechan, 1985 Air Pollution Emissions DOE Report PE-0001, December 1977.
  E.H. Pechan, "An Air Emissions Analyses of Energy Projections for the Annual Report to Congress," EIA Analysis Memorandum, AM/IA/78-18. (EIAC-DOE/EIA-0102/16). September 1978.

REGIONAL AIR QUALITY PROJECTIONS AND INTERMEDIATE DISPLAY SYSTEM (RAPIDS)

- This model examines how point and area source air emissions affect air quality. It uses aggregations of specific data on industrial, commercial, and transportation emissions sources. It reflects the effects of emission control regulations, economic growth, fuel switching, and energy conservation.

- RAPIDS covers 243 Air Quality Control Regions (AQCRs) and their aggregrates in the United States. Daily and annual averages for selected forecast years from 1985 to 2000 are available.

- References: Council on Environmental Quality, "User Prompted Graphical Display System (UPGRADE)," forthcoming. Edward H. Pechan, "1985 Air Pollution Emissions," Assistant Secretary for Policy and Evaluation, U.S. Department of Energy, December 1977. E.H. Pechan, "An Air Emissions Analysis of Energy Projections for the Annual Report to Congress," EIA Analysis Memorandum, AM/IA/78-18. (EIAC-DOE/EIA-0102/16). September 1978.

BROOKHAVEN INTEGRATED ENERGY/ECONOMY MODELING SYSTEM

- The purpose of this model is to analyze the impact of energy policies that encourage or discourage the use of various technologies and/or supply sources upon the U.S. economy and the domestic energy system.

- The model covers all major industries and major end-users of energy for primary, intermediate, and final energy fuels.

- References: P.J. Groncki, and W. Marcuse, "The Brookhaven Integrated Energy/Economy Modeling System and Its Use in Conservation Policy Analysis," Brookhaven Naitonal Laboratory, Upton, N.Y., 1979.

DOE-2

- The purpose of this model is to provide architects and engineers with a comprehensive tool for use in the modeling of energy loads and distribution systems, or in calculating life-cycle costs of owning and operating a building. A special weather package allows the user to observe the effects of varying weather conditons upon life-cycle costs. The model uses a Building Design Language (BDL), which allows laymen without computer training to use the program and enter their own data.

- The model can calculate the life-cycle cost of any residential or commercial building given the data that is input into the model. The model is designed to accept data including building materials and specifications, location of building, type of fuel used in the building, and economic data such as interest rates and rate of inflation.

- References: "DOE-2," DOE/CS/0108 (Fact Sheet). "DOE-2 Users' Guild," LBL-8689, Building Energy Analysis Group, Energy and Environment Division, Lawrence Berkeley Laboratory, Berkeley, California, 2/15/79. Prepared under DOE Contract W-7405-ENG-48.

BATTELLE FORECASTING SYSTEM ECONOMETRIC MODEL (FORSYS)

- The purpose of this model is to assist governmental and industry groups in the assessment of medium term macroeconomic trends such as prices, wages, net income to businesses and consumers. The model also forecasts parameters pertinent to plant investment, new product introduction, entry into new markets, and relocating production.

- FORSYS forecasts data for all OECD country. Annual projections are available for the short-term (next 5 years) and for the long-term (between 5 and 15 years).

- References: none

DOE F-1325.1
(10-79)

APPENDIX D: ACTS ENTRY FORM

(1) CONTROL NO.

(2) ISSUE/ACTION TITLE:

(3) SUMMARY:

(4) AUTHORITY:

(5) END PRODUCT/RECIPIENT:

– MILESTONES –	TARGET DATE
(6) START ASSIGNMENT	__/__/__
(7) START FINAL COORDINATION	__/__/__
DRAFT COORDINATED WITH:	__/__/__
(8) COORDINATION COMPLETE:	
MANDATORY CONCURRENCE:	__/__/__
INFO COPY WITH OPP. TO COMMENT:	__/__/__
(9) SUBMIT TO EXEC SEC (ES)	__/__/__
(10) UNDER SECRETARY REVIEW	__/__/__
(11) DEPUTY SECRETARY REVIEW	__/__/__
(12) SECRETARY REVIEW	__/__/__
(13) END PRODUCT COMPLETE	__/__/__
FINAL RULEMAKINGS ONLY –	
(14) PUBLIC HEARING/MEETING	__/__/__
(15) COMMENT PERIOD ENDS	__/__/__
(16) SUBMIT TO EXEC SEC (ES)	__/__/__
(17) UNDER SECRETARY REVIEW	__/__/__
(18) DEPUTY SECRETARY REVIEW	__/__/__
(19) SECRETARY REVIEW	__/__/__
(20) ISSUE FINAL RULE	__/__/__

AD CA CB CF CR CS DP EEO EIA ER ERA EV FE FERC GC HG IA IG IR LA MI NE PA PE PR RA
OTHER _____

AD CA CB CF CR CS DP EEO EIA ER ERA EV FE FERC GC HG IA IG IR LA MI NE PA PE PR RA
OTHER _____

AD CA CB CF CR CS DP EEO EIA ER ERA EV FE FERC GC HG IA IG IR LA MI NE PA PE PR RA
OTHER _____

NOTES:

STATUTORY DEADLINE: _____

CIRCLE AS APPROPRIATE:

SIGNIFICANT REG? YES NO
MAJOR IMPACT REG? YES NO

ANTICIPATED NEPA DOCUMENT:
EIS EA Memo to File

EV CONTACT: _____

DATE: _____

(21) BRIEFING COMMENTS:

(22) OFFICE:
(23) OFFICIAL: (24) TEL:
(25) PROJECT OFFICER: (26) TEL:
(27D) PRIORITY DESIGNATION: A B C D E (Circle one)

SIGNATURE OF SECRETARIAL/DOE STAFF OFFICER: _____

(FOR ES USE ONLY)
(27A) (27B) P S N (27C)

INSTRUCTIONS FOR COMPLETION OF ACTS ENTRY FORM

APPENDIX D

MILESTONE	TITLE
(1)	Control Number - will be provided by ES.
(2)	Issue/Action Title - should be concise but informative to the reader. (Limit 100 characters)
(3)	Summary - a concise statement describing the scope of the project and any other pertinent details. Limit 500 characters)
(4)	Authority - enter the source of the project including the law or directive. (Limit 100 characters)
(5)	End Product/Recipient - enter the final product of the assignment (e.g., final rule; issue paper) and the recipient of the final product. (Limit 200 characters)
(6)	Start Assignment - enter the appropriate date (NOTE: if the action has already occurred, enter a 'C' behind the date, e.g., 02/01/79C).
(7)	Start Final Coordination - enter the date when the sponsoring office intends to transmit the final product to other organizations for mandatory concurrence. If mandatory concurrences are not appropriate, enter the date when information copies with opportunity to comment will be distributed.
(8)	Coordination Complete - Circle the organizations that must provide draft coordination and mandatory concurrence. Also circle the organizations that will receive an information copy with opportunity to comment. Enter the desired completion date for the above actions.
(9)	Submit to ES - enter the date that the document will be submitted to ES for review and forwarding to the DOE Principal(s).
(10) (11) (12)	DOE Principal(s) Review Complete - enter the dates that you anticipate that the appropriate Principal(s) will complete their respective reviews. If a review by a DOE Principal is not required, enter 'N/A' in the appropriate date blank.
(13)	End Product Complete - enter the date that the end product will be completed, subject to approval by the appropriate DOE Principal(s), if applicable. IN ADDITION, PLEASE RECORD IN THE NOTES SECTION ANY STATUTORY COMMITMENTS.
(14)	Public Hearing/Meeting - enter the date when the last public hearing or meeting will be held.
(15)	Comment Period Ends - enter date when the public comment period ends.
(21)	Briefing Comments - for use by ES.
(22)	Office - enter the name of the Division or Branch performing the action. (e.g., Bld & Community Stds) (Limit 25 characters)
(23)	Official - enter the name of the responsible official.
(24)	Telephone - enter the phone number of the program official.
(25)	Project Officer - enter the name of the individual in the reponsible office's organization actually carrying out the project.
(26)	Telephone - enter the phone number of the project manager.
(27D)	Priority Designation - Circle the priority code using the criteria presented in HQ Order 1325.1: A = critical B = statutory deadline/executive order, C = time dependent DOE commitment, D = routine and E = discretionary

Notes - use this space for notes pertinent to the schedule (e.g., "OMB requires four week review"). Additional comments can be written on a plain sheet of paper and attached to this form.

Since an ACTS project and associated schedule represent a contract between the Secretarial/DOE Staff Officer and the DOE Principal(s), the signature of the Secretarial/DOE Staff Officer is required on the ACTS project entry form.

GPO 861 243

8/20/80

DOE F-1325.1
(10-79)

ACTS ENTRY FORM

(1) CONTROL NO.

(2) ISSUE/ACTION TITLE:
Weatherization Assistance for Low-Income Persons

(3) SUMMARY:
Issue Notice of Inquiry to Federal Register, Soliciting Comments on the Program

(4) AUTHORITY: ECPA (P.L. 94-385) as amended by NECPA (P.L. 95-619) and ESA (P.L. 96-294).

(5) END PRODUCT/RECIPIENT: Notice of Inquiry

– MILESTONES –	TARGET DATE
(6) START ASSIGNMENT	8/18/80
(7) START FINAL COORDINATION	9/5/80
DRAFT COORDINATED WITH: AD CA CB CF CR CS DP EEO EIA ER ERA (EV) FE FERC (GC) HG IA IG (IR) LA MI NE PA (PE) (PR) RA OTHER _____	9/15/80
(8) COORDINATION COMPLETE:	
MANDATORY CONCURRENCE: AD CA CB CF CR CS DP EEO EIA ER ERA (EV) FE FERC (GC) HG IA IG (IR) LA MI NE PA (PE) (PR) RA OTHER _____	9/29/80
INFO COPY WITH OPP. TO COMMENT: AD (CA) CB CF CR CS DP (EEO) EIA ER ERA EV FE FERC GC HG IA IG IR LA (MI) NE PA PE PR RA OTHER _____	9/29/80
(9) SUBMIT TO EXEC SEC (ES)	10/6/80
(10) UNDER SECRETARY REVIEW	10/9/80
(11) DEPUTY SECRETARY REVIEW	__/__/__
(12) SECRETARY REVIEW	__/__/__
(13) END PRODUCT COMPLETE	10/10/80
– FINAL RULEMAKINGS ONLY –	
(14) PUBLIC HEARING/MEETING	__/__/__
(15) COMMENT PERIOD ENDS	__/__/__
(16) SUBMIT TO EXEC SEC (ES)	__/__/__
(17) UNDER SECRETARY REVIEW	__/__/__
(18) DEPUTY SECRETARY REVIEW	__/__/__
(19) SECRETARY REVIEW	__/__/__
(20) ISSUE FINAL RULE	__/__/__

NOTES:

STATUTORY DEADLINE: _____

CIRCLE AS APPROPRIATE:

SIGNIFICANT REG? YES NO
MAJOR IMPACT REG? YES NO

ANTICIPATED NEPA DOCUMENT:
FIS EA Memo to File

EV CONTACT: _____

DATE: _____

(21) BRIEFING COMMENTS:

(22) OFFICE:
(23) OFFICIAL: (24) TEL:
(25) PROJECT OFFICER: (26) TEL:
(27D) PRIORITY DESIGNATION: A B C D E (Circle one)

SIGNATURE OF SECRETARIAL/DOE STAFF OFFICER: _____

(FOR ES USE ONLY)
(27A) (27B) P S N (27C)

APPENDIX E: ACTS ASSIGNMENT SCHEDULE

ACTION ASSIGNMENT SCHEDULE (ACTS) (1) CONTROL NO. CS-197
(C)

(2) ISSUE/ACTION TITLE: WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

(3) SUMMARY: ADMINISTRATIVE CHANGES TO PROGRAMMATIC REGULATIONS GOVERNING THE WEATHERIZATION ASSISTANCE PROGRAM.

(4) AUTHORITY: ECPA (P.L. 94-385) AS AMENDED BY NECPA (P.L. 95-619)

(5) END PRODUCT/RECIPIENT: FINAL RULE

-MILESTONES-	(A) ORIGINAL TARGET DATE	(B) CURRENT TARGET DATE	(C) COMMENTS
(6) START ASSIGNMENT	03/13/80T	03/13/80C	
(7) START FINAL COORDINATION	07/25/80T		NOTE 1
(8) COORDINATION:			
-MANDATORY CONCURRENCE-			
1: EV•GC•IR•PE•PP	07/29/80T		
-INFO COPY FOR COMMENT-			
3: EEO•MI	07/29/80T		
(9) SUBMIT TO EXEC SEC (ES)	N/A T		
(10) UNDER SECRETARY REVIEW	N/A T		
(11) DEPUTY SECRETARY REVIEW	N/A T		
(12) SECRETARY REVIEW	N/A T		
(13) END PRODUCT COMPLETE	N/A T		
-FINAL RULEMAKINGS ONLY-			
(14) PUBLIC HEARING/MEETING	03/17/80T	03/17/80C-1	
(15) COMMENT PERIOD ENDS	04/28/80T	04/28/80C-1	
(16) SUBMIT TO EXEC SEC (ES)	06/05/80T		
(17) UNDER SECRETARY REVIEW	08/07/80T		
(18) DEPUTY SECRETARY REVIEW	N/A T		
(19) SECRETARY REVIEW	N/A T		
(20) ISSUE FINAL RULE	08/08/80T		

(21) BRIEFING COMMENTS:

07/17/80 (22) OFFICE: WEATHERIZATION PROGRAM OFFICE
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