

INDIAN AFFAIRS MANUAL

- 1.1 Purpose.** This chapter provides guidance for the preparation and clearance of Federal Register documents. The purpose of publishing documents in the Federal Register is to inform the Tribes and the public of the policies, events, organization, functions, and rules of Indian Affairs (IA), which affect them.
- 1.2 Scope.** This policy applies to all functions under the authority of the Assistant Secretary - Indian Affairs (AS-IA), including the Bureau of Indian Affairs (BIA) and the Bureau of Indian Education (BIE).
- 1.3 Policy.** IA offices that develop, amend, or repeal Federal Register notices, significant guidance documents, and rules must coordinate with the Office of Regulatory Affairs and Collaborative Action (RACA), which serves as the designated Federal Register Liaison for IA. RACA reviews all Federal Register documents originating from IA programs in accordance with 318 Departmental Manual (DM), chapters 1-9.

IA utilizes the “Federal Register” database within the Data Tracking System (DTS) for routing Federal Register notices, and any related paperwork, to the appropriate offices for review and signing/final signature. Only after obtaining final signatory authority is the complete package sent to the Office of the Federal Register by RACA.

- 1.4 Authority.** The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9, and is redelegated to the AS-IA in 209 DM 8.

A. Statutes and Regulations.

- 1) 5 U.S.C. 551 et seq., Administrative Procedure Act (APA)
- 2) 5 U.S.C. 561 et seq., Negotiated Rulemaking Act
- 3) 5 U.S.C. 601 et seq., Regulatory Flexibility Act
- 4) 5 U.S.C. Appendix 2, Federal Advisory Committee Act
- 5) 42 U.S.C. 4321-4347, National Environmental Policy Act
- 6) 44 U.S.C. 3501 et seq., Paperwork Reduction Act of 1995 (PRA) as amended
- 7) 1 CFR Part 17, Publication Schedules
- 8) 1 CFR Part 18, Preparation and Transmittal of Documents Generally

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Part 18
Chapter 2

Regulatory Affairs and Collaborative Action
Federal Register Notices and Rules

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- 9) 1 CFR Part 21, Preparation of Documents Subject to Codification
- 10) 1 CFR Part 22, Preparation of Notices and Rulemaking Proposals
- 11) 1 CFR Part 51, Incorporation by Reference
- 12) 5 CFR Part 1320, Controlling Paperwork Burdens on the Public
- 13) 13 CFR Part 121, Small Business Size Standards
- 14) 25 CFR Part 83, Procedures for Federal Acknowledgment of Indian Tribes
- 15) 40 CFR Parts 1500-1508, National Environmental Policy Act Implementing Rules
- 16) 43 CFR 14, Petitions for Rulemaking

B. Guidance.

- 1) Executive Order (EO) 12866, Regulatory Planning and Review, 1993
- 2) EO 13563, Improving Regulation and Regulatory Review, 2011
- 3) EO 13771, Reducing Regulation and Controlling Regulatory Costs, 2017
- 4) Office of Management and Budget (OMB) Memorandum M-07-13, 2013, Implementation of Executive Order 13422 (amending Executive Order 12866) and the OMB Bulletin on Good Guidance Practices, 2007
- 5) 200 DM - Delegations of Authority
- 6) 318 DM - Federal Register Documents
- 7) 381 DM - Origination of Records and Information

C. Handbooks.

- 1) Federal Register Document Drafting Handbook, 2019 (available at: <https://www.archives.gov/federal-register/write/handbook>)

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1.5 Responsibilities.

- A. AS-IA and Deputy Assistant Secretaries - IA** are responsible for ensuring the Federal Register documents that add to, amend, or delete rules affecting IA programs are reviewed in accordance with 318 DM.
- B. Directors, BIA and BIE and Deputy Bureau Directors** are responsible for the following with regard to Federal Register notices and rules related to programs under their jurisdiction:
- 1) coordinating with RACA to develop rules;
 - 2) providing subject matter expertise and data in support of any required regulatory analysis;
 - 3) preparing reports, forms, determinations, justifications, and clearance packages;
 - 4) completing and filing the necessary forms for payment of Federal Register publication costs;
 - 5) preparing Federal Register notices to ensure that their programs comply with the requirements of the APA and/or any applicable statutory or regulatory requirement;
 - 6) conducting Tribal consultation on Federal Register notices, when appropriate;
 - 7) coordinating with RACA to conduct Tribal consultation on rules, when appropriate; and
 - 8) maintaining files of published Federal Register documents in accordance with the applicable records schedules.
- C. All Other Central Office Directors** are responsible for the following with regard to Federal Register notices and rules related to programs under their jurisdiction:
- 1) coordinating with RACA to develop rules;
 - 2) providing subject matter expertise and data in support of any required regulatory analysis;
 - 3) preparing reports, forms, determinations, justifications, and clearance packages;
 - 4) completing and filing the necessary forms for payment of Federal Register publication costs;
 - 5) preparing Federal Register notices to ensure that their programs comply with the requirements of the APA and/or any applicable statutory or regulatory requirement;
 - 6) conducting Tribal consultation on Federal Register notices, when appropriate;

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- 7) coordinating with RACA to conduct Tribal consultation on rules, when appropriate; and
- 8) maintaining files of published Federal Register documents in accordance with the applicable records schedules.

D. Director, RACA is responsible for the development, coordination, and management of Federal Register requirements for IA. RACA is responsible for ensuring that reporting requirements regarding the development of rules are met; rules are written in plain language to the greatest extent possible; reviews are made on a continuous basis; rules required by statute are developed; and that regulatory analysis is prepared when required. RACA is also responsible for assisting program offices in preparing for and hosting Tribal consultations related to rulemakings, when appropriate; and for performing the following:

- 1) **Federal Register Liaison** functions, including:
 - a) serving as the contact point for IA, other Bureaus, the Office of the Executive Secretariat, and the Office of the Federal Register (within the Government Printing Office) on all matters pertaining to Federal Register documents and issuances;
 - b) providing advice and assistance to IA employees on the preparation of documents;
 - c) reviewing all documents for format and compliance with 318 DM, the Federal Register Document Drafting Handbook, 1 CFR 1-22, and any other applicable instructions;
 - d) ensuring that the determination of significance and the decision on preparation of a regulatory analysis are approved by the Department of the Interior's (DOI) Office of Policy Analysis, and when required, that compliance statements for rules are prepared and approved as required by 318 DM 3;
 - e) ensuring that appropriate offices are included in the review and clearance of all documents as required by 318 DM 6;
 - f) coordinating the review of rules and the preparation of the semiannual agenda and other regulatory reports as required in 318 DM 2; and
 - g) maintaining a resource file of published Federal Register documents pertaining to IA, and providing an electronic copy or reproducing and distributing copies when needed.

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- 2) **Certifying Officer and Alternate** functions, including:
 - a) ensuring that three originals and a diskette containing a copy of the document are submitted to the Federal Register for publication;
 - b) certifying that the electronic version of the document is the same as the original hard copy;
 - c) certifying two copies, when only one original document is available;
 - d) ensuring the date of signature, when appropriate, and the name and title of the signing official are written or stamped on the originals and any copies sent to the Federal Register; and
 - e) ensuring the billing account code is listed on documents sent to the Federal Register.

1.6 Definitions.

- A. General Notices** are issued to advise the public of an event or information that may be of public interest or concern including, but not limited to, notices of Tribal consultation meetings, notices of agency action on Tribal liquor control ordinances and gaming compacts, notices of distribution plans of judgment funds awarded by the Court of Claims to any Indian Tribe, notices of intent, notices of availability, and notices of federal acknowledgment findings. The material in general notices is usually not regulatory, or a significant guidance document, and does not establish requirements to be followed. Some notices are required by law or regulation to be published in the Federal Register.
- B. Information Collection Notices** mean information collection or recordkeeping requirements imposed on the public that are subject to approval by the OMB under the PRA and 5 CFR 1320. The PRA requires that notices requesting comments on information collections and recordkeeping requirements be published in the Federal Register. In general, two Federal Register notices must be published by IA in support of an Information Collection Clearance Package:
 - 1) IA must publish a notice providing the public with 60 days to comment on information collection and recordkeeping requirements. This notice directs the public to submit comments to IA.
 - 2) After the Department submits the Information Collection Clearance Package to OMB, IA must publish another Federal Register notice informing the public of the submission and providing 30 additional days to comment on the collection requirements. This notice directs the public to submit comments to OMB, with a copy to IA.

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Additional information on the Federal Register notices required for Information Collection Clearance Packages can be found in 318 DM 4 and 318 DM6.

- C. Guidance Documents** are documents used by the DOI to assist staff in achieving statutory and regulatory compliance. Guidance documents may be published in the Federal Register to notify the public and stakeholders when they are established, amended, or repealed. OMB requires publication of significant guidance documents.
- D. Rule** is a document published in the Federal Register to implement or interpret law or policy, and may also be called a regulation or rulemaking. Rules are comprised of:
- 1) **Proposed Rules-** published in the Federal Register to give the public an opportunity to comment on them before they become final rules.
 - 2) **Final Rules-** published in the Federal Register to give the public notice of their content and effective date. Once effective, these permanent rules are incorporated in the Code of Federal Regulations (CFR).

1.7 Standards, Requirements, and Procedures.

A. General Standards.

- 1) When a rule is developed, amended, or repealed, the APA provides that the rule be published as a proposed rule first (in most cases), and then as a final rule. Once a rule is effective, it is codified in the CFR and remains in effect until it is modified or repealed by publication of another rule. Some guidance documents may qualify as rules; RACA will assist IA offices in making this determination.
 - a) Congress passed the Negotiated Rulemaking Act to encourage each federal agency to use negotiated rulemaking (Reg-Neg) processes or other innovative rulemaking procedures that allow parties that will be significantly affected by a rule to participate in the development of the rule.
 - b) The Reg-Neg process meets the intent of the APA, and can facilitate more effective regulatory development and regulations. All Reg-Neg committees must meet the requirements of the Federal Advisory Committee Act, including the procedures for choosing committee members, establishing the committee, providing notice of meetings, reporting requirements, and transparency.
 - c) Negotiated Rulemaking augments, but does not replace, the agency's rulemaking process. IA offices interested in establishing a negotiated rulemaking committee must coordinate with RACA. Rules resulting from negotiated rulemaking must:

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- Undergo the same IA and administration review processes as other rules.
- Comply with other applicable statutes and executive orders.
- Undergo appropriate environmental and other reviews (General Services Administration, OMB, and Environmental Impact Statements or other requirements).
- Undergo consultation with other agencies, as appropriate.
- Be published in the Federal Register for public comment per the APA.

B. Requirements.

- 1) Review by the Office of the Solicitor is required for Federal Register documents to determine if they are legally proper and complete, except for notices requesting comment on information collection requirements or recordkeeping requirements, and any notices for which the AS-IA has ordered a waiver.
- 2) Field Solicitors, in coordination with the appropriate Regional Director, must review and surname Liquor Ordinances and Federal Register documents announcing Liquor Ordinances, and:
 - a) The Regional Director will email to RACA the complete package, which must include the surnamed Liquor Ordinance and Federal Register document announcing the Liquor Ordinance.
 - b) RACA will enter the document into DTS for routing to the AS-IA for signature with a courtesy copy to the Central Office Solicitor and to the Office of Indian Services.
- 3) Specific assistance may be obtained from the RACA Federal Register Liaison and through RACA's website: <https://www.bia.gov/as-ia/raca/>.

C. Procedures.

1) **General**

Certain laws require publication of IA documents in the Federal Register. For example, laws require publication of the following:

- a) Tribal liquor control ordinances;
- b) Tribal-State class III gaming compact notices;
- c) Announcements of meetings of Federal advisory committees;

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- d) List of federally recognized Indian Tribes;
- e) List of Tribally designated agents for receipt of Indian Child Welfare Act (ICWA) notices; and
- f) Paperwork Reduction Act notices.

In other instances, a Federal Register publication may be appropriate to publicize an action or event.

RACA is the liaison to the Office of the Federal Register and the DOI's Office of the Executive Secretariat with regard to documents to be published in the Federal Register. RACA is available to assist all IA offices in drafting and processing Federal Register notices in an expeditious manner.

2) Drafting Federal Register Documents

A document to be published in the Federal Register must have certain headings and information. Each heading must be in bold. ALL CAPS are standard Federal Register headings that cannot be changed, and must appear in the order they appear in the example below. The exception is if there is no relevant date and/or address to include, then the respective DATES and/or ADDRESSES heading may be omitted.

The following template illustrates the headings and briefly describes their purposes:

<p>[4337-15]</p> <p>DEPARTMENT OF THE INTERIOR</p> <p>Bureau of Indian Affairs</p> <p>[192A2100DD / AAKC001030 / A0A501010.999900]</p> <p>Topic of Federal Register Notice Goes Here</p> <p>AGENCY: Bureau of Indian Affairs, Interior.</p> <p>ACTION: Notice.</p> <p>SUMMARY: This is a brief summary of the Federal action being taken, consisting of no more than a few sentences. Please do not include dates, citations, or other detailed information here.</p>

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DATES: This is where any relevant dates are listed.

ADDRESSES: This is where any relevant addresses are listed.

FOR FURTHER INFORMATION CONTACT: This is where the contact's name, title, phone number, and email address is listed. An individual's name must be included.

SUPPLEMENTARY INFORMATION:

This is where more detailed information about the Federal action is provided.

Dated:

Tara Sweeney,
Assistant Secretary – Indian Affairs

The Federal Register follows the Government Publishing Office's (GPO) Manual of Style. Some common requirements that appear in Federal Register documents are shown in the following table:

Use:	Do Not Use:
Tribe, Tribal	tribe, tribal
Federal, federally (lowercase for "federally")	federal
State (for the entity)	state
U.S.C.	USC
CFR	C.F.R.
FR	Fed. Reg.
25 U.S.C. 1502	25 U.S.C. § 1502
25 CFR 11.02	25 CFR § 11.102

If a document is more than one page, please include page numbers in the bottom center of each page.

3) Processing Federal Register Documents Using the DTS

All IA program offices should continue to use DTS to circulate Federal Register document packages electronically. In exceptional circumstances where immediate surnames are required, RACA may assist in obtaining surnames by email. In these instances, either the program office or RACA must then upload PDF copies of the email surnames to the record in DTS.

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To ensure that each document progresses through the surname process without delay, program office staff must include the following items as part of the surname package for all documents in the DTS Federal Register database:

- a) Federal Register document ready for surnaming
 - See prior section for information on how to draft a Federal Register document.
 - Briefing Paper for Departmental Clearance. This document is available through RACA's intranet website:
<https://inside.indianaffairs.gov/asia/raca/federal-register-publications>.
This Briefing Paper is required by the DOI.
- b) Dear Tribal Leader letter (if appropriate). This document is available at:
<https://inside.indianaffairs.gov/asia/raca/federal-register-publications>.
 - Dear Tribal Leader letters are recommended if the document is announcing consultation.
- c) Related supplemental attachments or correspondence.

For convenience, RACA has developed guidance for using the Federal Register database within DTS. This document is titled: "Guidance – Federal Register Documents Surnamed in DTS" and is available at:
<https://inside.indianaffairs.gov/asia/raca/federal-register-publications>.

It is not necessary to provide hard copies of Federal Register documents. While certain political officials require the documents in hard copy to review and surname, the Office of the Executive Secretariat - IA (ES-IA) ensures that the copies are printed out from documents uploaded as attachments into DTS. There is an exception to this practice that requires hard copies be provided when original signatures appear on supporting documentation. Examples of documents with original signatures include: (1) Fee-to-Trust background materials, (2) Hearth Act background materials, and (3) Reservation Proclamations.

In general, when documents are routed for surname in DTS the sequence for routing should be:

- a) Director of the program office originating the document
- b) Office of the Solicitor (SOL-DAD), with a "Routing Comment" identifying any appropriate individual from SOL that should review the document

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- c) RACA
- d) ES-IA

Exceptions are information collection notices under the Paperwork Reduction Act and notices publishing Tribal liquor control ordinances.

A useful feature of DTS is the ability to search for documents and view where the document is in the surnaming process. Program office staff should proactively track a document's progress themselves when the document is subject to a regulatory or statutory deadline, though RACA will assist with inquiries about document status if necessary. Tracking a document in DTS helps to ensure the document is published by the deadline.

4) **Signatory Authority**

- a) **The AS-IA and Deputy Assistant Secretaries - Indian Affairs** may sign all Federal Register documents, including those issuing proposed and final rules published in Chapter 1, Title 25 of the CFR, and may delegate signature authority for routine notices to the appropriate directorate.
- b) **The Director, BIA** may sign Federal Register notices relating to BIA.
- c) **The Director and Deputy Director, BIE** may sign those Federal Register notices relating only to Indian Education.
- d) **The RACA Director or the IA Information Collection Clearance Officer (ICCO)** may sign all information collection Federal Register notices required by the PRA.
- e) **The Director, Office of Federal Acknowledgment (OFA)** may sign notices of proposed findings under 25 CFR part 83, as published in 2016, and any other notices for which OFA is responsible under those regulations.
- f) **Regional Directors** may sign only those Federal Register notices not involving rulemaking, or notices involving their particular region after obtaining permission from the AS-IA. Notices signed by Regional Directors are subject to Headquarters review and coordination of their publication in the Federal Register.

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5) **Payment for Publication in the Federal Register**

The GPO charges agencies for publishing material in the Federal Register. GPO generally updates its rates each year in GPO Circulars.¹

Program offices originating documents for publication in the Federal Register should be conscious of the costs and strive to be as brief as possible while providing the public with complete information.

To ensure that GPO properly bills RACA for IA publications, the following information must be included on programs' Federal Register documents:

- a) Include billing code "(4337-15)" on the top line.
- b) Include the accounting code on the line after "Bureau of Indian Affairs"- for FY2020 for example, the accounting code is "[201A2100DD / AAKC001030 / A0A501010.999900201

An illustration of both codes appear in the "Guidance – Federal Register Documents Surnamed in DTS" and may be accessed at <https://inside.indianaffairs.gov/asia/raca/federal-register-publications>.

6) **Timing for Surname and Publication**

Documents should be entered into DTS and routed for surname at least four (4) weeks before the target publication date. This lead time is necessary to ensure that persons in the surname and approval chain have time to review and sign off on the document, as the approval chain includes not only IA personnel and officials, but also DOI Office of the Secretary officials.

This lead time also ensures that the Office of the Federal Register has time to process the document. If a document is delivered to the Federal Register before 2 p.m. on Working Day 1, the Office of the Federal Register will generally put the document on its "public inspection desk" on Working Day 3 and publish the document in the Federal Register on Working Day 4 (a "Working Day" is any regular weekday that is not a Federal holiday). It may take longer for publication if the Federal Register is experiencing a high volume of documents or if the document for publication is exceptionally long.

¹ <https://www.gpo.gov/how-to-work-with-us/agency/circular-letters>

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7) Logistics for Publication

If hard copy delivery to the Federal Register is necessary, RACA will notify the program office when its document is ready to be submitted to the Federal Register. RACA must certify the hard copy document and disc (of the document) in order for the Federal Register to accept the document for publication.

Typically, staff from the program office originating the document hand-delivers the document to the Office of the Federal Register at 7 G Street, NW, Suite A-734, Washington, DC 20401. In some cases, RACA may be able to coordinate with delivery of other packages.

If RACA is able to obtain the appropriate signatory's signature electronically, then RACA will deliver the document to the Federal Register electronically when the surname process is complete.

Approval

MARK CRUZ

Digitally signed by MARK CRUZ
Date: 2020.06.08 14:39:45 -04'00'

6/08/20

Mark Cruz

Date

Deputy Assistant Secretary – Policy and Economic Development