

INDIAN AFFAIRS MANUAL

- 1.1 Purpose.** This chapter provides guidance for the preparation and clearance of Federal Register documents. The purpose of publishing in the Federal Register is to inform the Tribes and the public of changes in policies, events, the organization, functions, and rules of Indian Affairs (IA).
- 1.2 Scope.** This policy applies to all programs and offices under the authority of the Assistant Secretary - Indian Affairs (AS-IA), including offices under the AS-IA, the Bureau of Indian Affairs (BIA), the Bureau of Indian Education (BIE), and the Bureau of Trust Funds Administration (BTFA)¹.
- 1.3 Policy.** IA offices that develop, amend, or repeal Federal Register Notices (FRNs), significant guidance documents, and rules must coordinate with the IA 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 1-3.
- 1.4 Authority.**
- A. Statutes and Regulations.**
- 1) 5 U.S.C. §§ 551 - 559, Administrative Procedure Act (APA)
 - 2) 5 U.S.C. §§ 561 - 570a, Negotiated Rulemaking Procedure
 - 3) 5 U.S.C. 601 et seq., Regulatory Flexibility Act
 - 4) 5 U.S.C. Chapter 10, Federal Advisory Committees
 - 5) 42 U.S.C. 4321 et seq., National Environmental Policy Act (NEPA)
 - 6) 44 U.S.C. 3501 et seq., Paperwork Reduction Act of 1995 (PRA), as amended
 - 7) 1 Code of Federal Regulations (CFR) 17, Filing for Public Inspection and Publication Schedules
 - 8) 1 CFR 18, Preparation and Transmittal of Documents Generally
 - 9) 1 CFR 21, Preparation of Documents Subject to Codification

¹ RACA submits BTFA's FRNs to the Office of the Federal Register (OFR) for publication. However, BTFA does not work through RACA for FRN preparation or surnaming through the Data Tracking System (DTS).

INDIAN AFFAIRS MANUAL

Part 18
Chapter 2

Regulatory Affairs and Collaborative Action
Federal Register Notices and Rules

Page 2

- 10) 1 CFR 22, Preparation of Notices and Proposed Rules
- 11) 1 CFR 51, Incorporation by Reference
- 12) 5 CFR 1320, Controlling Paperwork Burdens on the Public
- 13) 13 CFR 121, Small Business Size Standards
- 14) 25 CFR 83, Procedures for Federal Acknowledgment of Indian Tribes
- 15) 40 CFR 1500-1508, National Environmental Policy Act Implementing Regulations
- 16) 41 CFR Part 102-3, Federal Advisory Committee Management
- 17) 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) Presidential Memorandum, Modernizing Regulatory Review, January 20, 2021
- 4) 318 Departmental Manual (DM) 1 - 3, Federal Register Documents
- 5) 380 DM 1, Records Management Program Roles and Responsibilities

C. Handbooks.

- 1) Federal Register: Document Drafting Handbook, current version (available at: <https://www.archives.gov/federal-register/write/handbook>)
- 2) 318 DM HB – How to Prepare Regulations and Federal Register Notices Handbook, 2013
- 3) U.S. Government Publishing Office (GPO) Style Manual, current version

INDIAN AFFAIRS MANUAL

1.5 Responsibilities.

- A. AS-IA and IA Deputy Assistant Secretaries** are responsible for ensuring the FRNs that add to, amend, or delete rules affecting IA programs are reviewed in accordance with 318 DM.
- B. Directors, IA, BIA, BIE, and BTFA** are responsible for the following regarding FRNs and rules related to programs under their jurisdiction:
- 1) coordinating with RACA to develop rules;
 - 2) preparing an analysis of the costs and benefits of the rule for all regulatory actions, and providing subject matter expertise and data;
 - 3) preparing reports, forms, determinations, justifications, and clearance packages;
 - 4) preparing FRNs to ensure that their programs comply with the APA and/or any applicable statutory or regulatory requirement;
 - 5) coordinating with RACA on Tribal consultations related to rulemakings, including the Federal Register announcement(s) on Tribal consultations; and
 - 6) maintaining files of published Federal Register documents in accordance with the applicable records schedules.
- C. Regional Directors** are responsible for:
- 1) reviewing and surnaming Liquor Ordinances and Federal Register documents announcing such ordinances;
 - 2) coordinating the review and surnaming of liquor ordinances with the appropriate Field Solicitor; and
 - 3) routing complete liquor ordinance FRN packages in the Data Tracking System (DTS) for surnaming.
- D. Director, RACA** is responsible for:
- 1) developing, coordinating, and managing the Federal Register process and requirements for IA;
 - 2) managing and coordinating rulemaking with the Department of the Interior (DOI);
 - 3) ensuring that reporting requirements regarding the development of rules are met, and that rules are written in plain language;
 - 4) reviewing regulations on a continuous basis and ensuring that rules required by statute are developed;

INDIAN AFFAIRS MANUAL

- 5) ensuring that IA's rulemaking process complies with the requirements of 318 DM, including obtaining appropriate review and clearance of all documents;
- 6) coordinating the review of rules and the preparation of the semiannual agenda and other regulatory reports as required in 318 DM;
- 7) administrating and overseeing management of the Federal Docket Management System (FDMS) process for public comments;
- 8) obtaining Office of Information and Regulatory Affairs (OIRA) review for all "significant" regulatory actions before the actions take effect;
- 9) assisting program offices in preparing for and hosting Tribal consultations related to rulemakings, when appropriate; and
- 10) providing advice and assistance to IA employees on the preparation of documents.

E. Designated Federal Register Liaison and Alternate are responsible for:

- 1) serving as the contact point for IA, other bureaus, the Office of the Executive Secretariat, and the Office of the Federal Register (OFR) (within the GPO) on all matters pertaining to Federal Register documents and issuances;
- 2) providing advice and assistance to IA employees on the preparation of documents;
- 3) reviewing all documents for format and compliance with 318 DM, the Federal Register's Document Drafting Handbook, 1 CFR Part 22, and any other applicable instructions;
- 4) ensuring that appropriate offices are included in the review and clearance of all documents as required by 318 DM 1;
- 5) coordinating the review of rules and the preparation of the semiannual agenda and other regulatory reports as required in 318 DM 2;
- 6) ensuring that a digitally signed copy of the document is submitted to the designated online portal established by the OFR for publication in the Federal Register;
- 7) maintaining a resource file of published Federal Register documents pertaining to IA, and providing an electronic copy or reproducing and distributing copies when needed; and
- 8) ensuring the billing address code (BAC) is listed on documents sent to the Federal Register.

F. Office of the Solicitor (SOL), to include Field Solicitors as appropriate, is responsible for reviewing Federal Register documents to determine whether the documents are legally proper and complete.

INDIAN AFFAIRS MANUAL

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. 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. The Office of Management and Budget (OMB) requires publication of significant guidance documents.
- C. 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 FRNs must be published by IA in support of an Information Collection Clearance package:
- 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.
 - After the Department submits the Information Collection Clearance Package to OMB, IA must publish another FRN 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.

Additional information on the FRNs required for Information Collection Clearance packages can be found in 318 DM.

- 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:

INDIAN AFFAIRS MANUAL

- **Advance Notice of Proposed Rulemaking (ANPRM)** – issued to allow the public to provide initial feedback on the formulation of a regulatory change at an early stage prior to the development of a proposed rule.
- **Interim Rules** – published in the Federal Register that become effective upon publication without seeking public comment on the rule’s substance. IA has used this type of rule to make technical corrections or amendments that have little to no impact on the substance of a rule.
- **Proposed Rules** – published in the Federal Register to give the public an opportunity to comment on them before they become final rules.
- **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 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.
- 2) Congress passed the Negotiated Rulemaking Act to encourage each federal agency to use negotiated rulemaking processes, also known as regulatory negotiation (“reg-neg”), to bring together representatives of an agency, Tribe(s), and other various interested groups that will be significantly affected by a rule, to participate in and negotiate the development of the rule.

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 (FACA); this includes publishing in the Federal Register the procedures for choosing committee members, establishing the committee, providing notice of meetings, reporting requirements, location of the committee’s report, and other activities.

INDIAN AFFAIRS MANUAL

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. More information can be found on RACA's SharePoint site here: <https://doimsp.sharepoint.com/sites/doi-asia-raca/SitePages/Negotiated-Rulemaking.aspx>

Rules resulting from negotiated rulemaking must:

- 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 (GSA), OMB, and Environmental Impact Statements (EIS) or other requirements).
- Undergo consultation with other agencies and Tribes, as appropriate.
- Be published in the Federal Register for public comment per the APA.

B. Requirements.

- 1) RACA is the liaison to the OFR and to the DOI's Office of the Executive Secretariat regarding IA documents to be published in the Federal Register. RACA is available to assist all IA offices in drafting and processing FRNs in an expeditious manner.

Specific assistance may be obtained from the RACA Federal Register Liaison and through RACA's SharePoint site here: <https://doimsp.sharepoint.com/sites/doi-asia-raca/SitePages/Federal-Register-Publications.aspx>

- 2) IA utilizes the "Federal Register" database within the DTS for routing FRNs, and any related paperwork, to the appropriate offices for review and surnaming/final signature. Only after all necessary surnames are obtained and the AS-IA (or designee) digitally signs the FRN, will RACA upload the FRN to the OFR's online portal for publication.
- 3) 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.

INDIAN AFFAIRS MANUAL

- 4) Field Solicitors, in coordination with the appropriate Regional Director, must review and surname Liquor Ordinances and Federal Register documents announcing Liquor Ordinances. The Regional Director will then route the complete package in DTS for additional surnames. Once all surnames have been obtained, RACA will route the package to the AS-IA for signature and submit the signed FRN to OFR for publishing.

C. Procedures.

1) **General**

Some notices are required by law to be published in the Federal Register. Examples of documents IA must publish include the following:

- a) Tribal liquor control ordinances;
- b) Tribal-State class III gaming compact notices;
- c) Announcements of Federal Government discretionary advisory committee activities (i.e., intent to establish; renew; re-establish; meetings; and reports/recommendations);
- d) List of federally recognized Indian Tribes;
- e) List of Tribally designated agents for receipt of Indian Child Welfare Act (ICWA) notices;
- f) Tribal leasing ordinances approved under the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act;
- g) Reservation proclamation notices;
- h) Rate adjustments related to irrigation;
- i) Fee-to-trust notices; and
- j) PRA notices, among others.

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

2) **Drafting Federal Register Documents**

A document to be published in the Federal Register must have certain headings and other required information.

INDIAN AFFAIRS MANUAL

The Federal Register follows the GPO's Style Manual, which can be found online here: <https://www.govinfo.gov/collection/gpo-style-manual?path=/gpo/U.S.%20Government%20Publishing%20Office%20Style%20Manual/2016>.

3) **Processing Federal Register Documents Using the DTS**

All IA program offices are required to use DTS to circulate Federal Register packages electronically, using the 'IAFR' category. In general, when documents are routed for surname in DTS the sequence for routing should be:

- First, Director of the program office originating the document;
- Second, Office of the Solicitor (SOL-DAD), with a "Routing Comment" identifying any appropriate individual from SOL that should review the document;
- Third, RACA; and
- Finally, Office of the Executive Secretariat - IA (ES-IA).

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.

To ensure that each document progresses through the surnaming 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 SharePoint site: <https://doimspp.sharepoint.com/sites/doi-asia-raca/SitePages/Federal-Register-Publications.aspx>
This Briefing Paper is required by the DOI.
- b) Dear Tribal Leader Letter (DTLL) (if appropriate). This document is also available on RACA's SharePoint site (noted above).
 - DTLLs are recommended if the document is announcing consultation.
- c) Related supplemental attachments or correspondence.

INDIAN AFFAIRS MANUAL

4) **Signatory Authority**

- a) **The AS-IA and IA Deputy Assistant Secretaries** may sign all Federal Register documents and may delegate signature authority for routine notices to the appropriate directorate, such as:
- b) **The Director, BIA (DBIA)** may digitally sign FRNs relating only to BIA.
- c) **The Director and Deputy Director, BIE** may digitally sign FRNs relating only to Indian Education.
- d) **The Director and Deputy Director, BTFA** may digitally sign FRNs relating only to Trust Funds Administration.
- e) **The RACA Director or the IA Information Collection Clearance Officer (ICCO)** may digitally sign all information collection FRNs required by the PRA.
- f) **The Director, Office of Federal Acknowledgment (OFA)** may digitally 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.
- g) **Regional Directors** may digitally sign FRNs not involving rulemaking, or notices involving their particular region after obtaining permission from the AS-IA. Notices signed by Regional Directors are subject to DBIA and other Central Office review and coordination of their publication in the Federal Register.

Note: The DOI's Office of the Chief Information Officer (OCIO) signs Privacy Act notices on behalf of IA.

5) **IA Billing Code for GPO Publications**

The GPO requires agencies to reimburse costs for publishing in the Federal Register (44 U.S.C. § 1509). GPO generally updates its rates each year in GPO Circular Letters.²

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

- a) Include the BAC "(4337-15)" on the top line as the unified BAC for all of IA.

² <https://www.gpo.gov/how-to-work-with-us/agency/circular-letters>

INDIAN AFFAIRS MANUAL

- b) Include the line of accounting (LOA) code on the line after “Bureau of Indian Affairs”. For example, the LOA for Fiscal Year (FY) 2025 is “[256A2100DD / AAKP3000000 / A0A501010.000000].
- c) RACA coordinates with the IA Office of Budget and Performance Management (OBPM) to obtain funds to reimburse GPO for annual publications.

6) **Timing for Surname and Publication**

Documents should be entered into DTS and routed for surname at least 45 calendar days before the target publication date (and 60 calendar days before the publication’s public meeting 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 OFR has time to process the document.

7) **Logistics for Publication and Final Processing**

RACA will obtain the appropriate digital signature as noted above in 1.7 C. 4), and will electronically submit the document to the OFR. Once RACA receives confirmation from OFR that it accepted the FRN for publication, RACA will notify the program office when the FRN will be published in the Federal Register. After the FRN is published, RACA will upload the published notice in DTS and notify the program office to close the routing in DTS.

Approval



Bryan Newland
Assistant Secretary – Indian Affairs

December 26, 2024

Date