

**Information Management: Records
Management**

Publishing in the Federal Register

**Headquarters
Department of the Army
Washington, DC
7 August 2015**

UNCLASSIFIED

SUMMARY of CHANGE

AR 25-58

Publishing in the Federal Register

This major revision dated 7 August 2015--

- o Changes name from "Publication in the Federal Register of Rules Affecting the Public" to "Publishing in the Federal Register" (cover).
- o Transfers proponency from the Deputy Chief of Staff, G-1 to the Administrative Assistant to the Secretary of the Army (title page).
- o Adds requirement for the Federal Docket Management System (para 1-4a(2)(e)).
- o Adds recordkeeping requirements (para 1-9).
- o Adds domestic partner verbiage under preferred usage or comment for term 34 (table D-5).
- o Adds processing requirements and procedures for rulemaking actions (app G).
- o Replaces major Army command with Army command, Army service component command, and direct reporting unit (throughout).

Effective 7 September 2015

Information Management: Records Management

Publishing in the Federal Register

By Order of the Secretary of the Army:

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General, United States Army
Chief of Staff

Official:



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History. This publication is a major revision.

Summary. This regulation prescribes policies and assigns responsibilities for the submission of Department of the Army policies, practices, and procedures for publication in the Federal Register and the Code of Federal Regulations, as required by Title 44 of the United States Code, Chapter 15, and Title 5, United States Code, Section 551 et seq. The regulation includes requirements implemented by DODD 5025.1 and various executive orders and acts that affect the publication of Army rules.

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated.

Proponent and exception authority. The proponent of this regulation is the Administrative Assistant to the Secretary of the Army. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief with the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25–30 for specific guidance.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2 and

identifies key internal controls that must be evaluated (appendix H).

Supplementation. Supplementation of this regulation and establishment of command or local forms are prohibited without prior approval from the Office of the Administrative Assistant to the Secretary of the Army, U.S. Army Records Management and Declassification Agency (AAHS–RDO), 7701 Telegraph Road, Alexandria, VA 22315–3860.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to U.S. Army Records Management and Declassification Agency (AAHS–RDO), 7701 Telegraph Road, Alexandria, VA 22315–3860.

Distribution. This publication is available in electronic media only and is intended for command levels A, B, C, D, and E for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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Glossary

Chapter 1

General

1–1. Purpose

This regulation prescribes procedures and responsibilities for publishing certain Department of the Army (DA) policies, practices, and procedures in the Federal Register (FR) as required by statute and for inviting public comment thereon, as appropriate. This regulation implements portions of the Administrative Procedure Act (APA) (Title 5, United States Code, Subchapter II (5 USC Subchapter II)); Freedom of Information Act (FOIA) (5 USC 552 amended by Public Law 104–231, 110 Stat. 3048) (“Stat” means “U.S. Statutes at Large”); Regulatory Flexibility Act (5 USC 601 et seq. (“et seq.” means “and the following”); Small Business Regulatory Enforcement Fairness Act (5 USC 801 et seq.); Congressional Review Act (CRA) (5 USC Chapter 8); Executive Order (EO) 12866; EO 13563; and Department of Defense Directive (DODD) 5025.1.

1–2. References

See appendix A.

1–3. Explanation of terms

See the glossary.

1–4. Responsibilities

a. The Administrative Assistant to the Secretary of the Army (AASA) acts as the Army regulatory officer and has oversight of the Army Federal Regulatory Program and Unified Agenda of Federal Regulatory and Deregulatory Actions. The AASA will coordinate with the Assistant Secretary of the Army (Civil Works) (ASA (CW)) to ensure the regulatory requirements and functions are properly executed.

(1) The Director, U.S. Army Records Management and Declassification Agency (RMDA), on behalf of the AASA, will develop policy and direction for the Rulemaking Program for DA. The Director is responsible for establishing policies concerning DA announcements and rules (proposed, interim, and final) published in the FR and for ensuring Army compliance with this regulation.

(2) The Director, RMDA will—

(a) Assist the officials listed in table 1–1 in the performance of their responsibilities.

(b) Represent the Army in submitting to the Office of the Federal Register (OFR) any matter published in accordance with this regulation.

(c) Submit the annual Regulatory Plan and semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to the Office of the Secretary of Defense, Office of the Deputy Chief Management Officer (DCMO), Directorate for Oversight and Compliance, Regulatory and Audit Matters Office (R&AMO), as required by EO 12866 and 5 USC Chapter 6.

(d) Submit a copy of published final rules (and certain analyses related to the rule, as appropriate) to both Houses of Congress and to the U.S. Government Accountability Office (GAO), as required by the CRA.

(e) Provide an electronic copy of all appropriate rules to R&AMO before publication so that a docket can be established and required metadata associated with the docket and documents can be identified and submitted to the Federal Docket Management System (FDMS).

(f) Review all docket material on FDMS posted at <http://www.regulations.gov> to ensure rules have been posted and promptly notify R&AMO of any problems for correction.

b. The ASA (CW) will submit the annual Regulatory Plan and semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to RMDA, as required by EO 12866 and 5 USC Chapter 6.

c. The Chief of Engineers, U.S. Army Corps of Engineers (USACE) will—

(1) Represent the Army in submitting to the OFR only those Civil Works Program rules (proposed, interim, and final) that are codified in Titles 33 and 36 of the Code of Federal Regulations (33 and 36 CFR) and subject to the terms of this regulation.

(2) Submit a copy of published final rules (and certain analyses related to the rule, as appropriate) to both Houses of Congress and GAO, as required by the CRA.

(3) When submitting rules codified in 33 and 36 CFR, USACE may coordinate directly with OFR (in lieu of RMDA) but must otherwise comply with the provisions of this regulation. In determining the applicability of this regulation to its rulemaking activities, Army Civil Works rulemaking proponents may replace “RMDA” with “USACE” wherever it appears in the text of this regulation.

d. The officials listed in table 1–1 (hereinafter referred to as proponents) are responsible for—

(1) Ensuring maximum practicable participation of the public in the formulation of Army rules that affect the public by allowing public comments on any proposed rules. Where Army proponents deem appropriate, the public should participate in consensual mechanisms, such as negotiated rulemaking.

(2) Determining which matters within their areas of jurisdiction must be published in accordance with chapter 2 and for the submission of actions specified in chapter 3.

(3) Monitoring the FDMS for public comments posted in response to their regulatory actions.

e. Legal advisors and staff judge advocates supporting the proponents will provide legal advice and assistance in connection with proponent responsibilities contained herein.

Table 1-1 Rulemaking proponents	
Official	Area of jurisdiction
AASA	Immediate Office of the Secretary of the Army and the Office of the Administrative Assistant
Director of the Army Staff	Elements, Office of the Chief of Staff, Army
Head of each Army Staff agency	Headquarters of the agency and its field operating and staff agencies
Commander, Army command (ACOM)	Headquarters of ACOMs and all subordinate activities and units
Commander, Army service component command	Headquarters of Army service component commands and all subordinate activities and units
Commander, direct reporting unit	Headquarters of direct reporting units and all subordinate activities and units
RMDA	All other elements not covered above

1-5. Designation of rulemaking coordinators

Proponents will designate rulemaking coordinators, in writing, to perform the duties prescribed by chapter 3 for their areas of functional responsibility. At the time of designation, RMDA will be informed of the name and telephone number of the designated individual. The designee will—

- a.* Ensure that all rules and notices to be published comply with the FR format.
- b.* Transmit material to RMDA and provide the name, office symbol, and telephone number of the action officer for each rule or general notice for inclusion in the FR.
- c.* Coordinate with publication control officers to ensure submission of statements of compliance required by paragraph 1-6.
- d.* Notify RMDA when a regulation published in the FR becomes obsolete or is superseded by another regulation.

1-6. Statement of compliance

No rule may be issued unless a statement is on file with RMDA from the proponent stating the rule has been evaluated under the provisions of this regulation. If the proponent’s evaluation determines that the provisions of this regulation do not apply to a particular rule, the rationale for this determination must be included in the statement.

1-7. Submission of regulations for publishing

When submitting a regulation for publishing to the Army Publishing Directorate, each proponent must include with the submission package a copy of RMDA’s written clearance that the regulation has been processed through RMDA for publication in the FR or that it falls within one of the exempted categories (see para 2-5). See AR 25-30 and DA Pam 25-40 for guidance on publishing regulations.

1-8. Regulatory review

a. Proponents of Army regulations will participate in the regulatory process and adhere to the regulatory process as prescribed in this regulation when reviewing their existing publications. This review will follow the same procedural steps outlined for the development of new regulations.

- b.* In selecting regulations to be reviewed, proponents will consider such criteria as the—
 - (1) Requirement for the regulation.
 - (2) Costs and benefits of the regulation, including both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures.
 - (3) Type and number of complaints or suggestions received.
 - (4) Burdens imposed directly or indirectly by the regulation or both the public and other Government entities.
 - (5) Elimination of inconsistent, incompatible, overlapping, or duplicative regulations.

(6) Length of time since the regulation has been reviewed for scientific, technological, economical, or administrative changes.

1–9. Requirements for recordkeeping

This regulation requires the creation, maintenance, and use of notices published in the FR and Unified Agenda of Federal Regulatory and Deregulatory Actions files. This regulation does not require the creation of any transfer files. The notices published in the FR will be kept in the current files area until they are 1 year old, and then destroyed in accordance with AR 25–400–2. The Unified Agenda of Federal Regulatory and Deregulatory Actions will be kept in the current files area until they are 2 years old, and then destroyed in accordance with AR 25–400–2.

Chapter 2 Information to be Published in the Federal Register

2–1. Acts to use for publishing

The APA, as amended by the FOIA, requires that certain policies, practices, procedures, and other information concerning DA be published in the FR to provide notice to the public. In addition, various statutory and nonstatutory authorities, as applicable, may require certain actions and studies performed in conjunction with the publication of the regulation. In general, this information explains where, how, and by what authority the Army performs any of its functions that affect the public. This chapter describes what information must be published and the effect of failing to publish it.

2–2. Information to be published

In deciding which information to publish, consider the basic objective of informing all interested persons of how to deal effectively with DA. Subject to the exceptions in paragraph 2–5, information to be published will include—

- a.* Descriptions of the Army’s central and field organization and the established places at which, the officers from whom, and the methods whereby the public may obtain information, make submissions or requests, or obtain decisions.
- b.* Procedures by which the Army conducts its business with the public, both formally and informally.
- c.* Rules of procedures, descriptions of forms available or the places where forms can be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.
- d.* Substantive rules and regulations applicable to the public as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by the Army.
- e.* Documents that confer a right or privilege on a segment of the public or have a direct or substantial effect on the public or any significant portion of the public.
- f.* Documents that prescribe a course of conduct that must be followed by persons outside the Government to avoid a penalty, or secure a right or privilege.
- g.* Documents that impose an obligation on the general public or members of a class of persons outside the U.S. Government.
- h.* Rules (significant) that may—
 - (1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy; productivity; competition; jobs; environment; public health or safety; or State, local, or tribal governments or communities.
 - (2) Create a serious inconsistency or otherwise interfere with an action taken by another agency.
 - (3) Alter materially the budgetary effect of entitlements, grants, user fees, loan programs, or the rights and obligations thereof.
 - (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles of EO 12866.
- i.* Open, partially closed, and closed meetings that require members to take action on behalf of the Army where such deliberations determine or result in the joint conduct or disposition of Army business. Notices for meetings will be published a minimum of 15 calendar days before the date of the meeting or as prescribed by statute. Sunshine Act meetings are published in compliance with 5 USC 552b(e)(3); attendance at these meetings may be restricted for reasons of national security or reasons indicated in 5 USC 552b(c). Notice for Sunshine Act meetings must be published at least 1 week before the date of the meeting (5 USC 552b(e)(1)).
- j.* Establishment or renewal of advisory committees are to be published in accordance with their directive or statutory and/or nonstatutory authority.
- k.* Public information collection requirements in compliance with the Paperwork Reduction Act (PRA) (44 USC 3501 et seq.).
- l.* Descriptions of particular programs, policy, or procedures in detail, such as—
 - (1) Decisions and rulings.

- (2) Grant application deadlines.
- (3) Availability of environmental impact statements.
- (4) Delegations of authority.
- (5) Issuance or revocation of licenses.
- (6) Hearings and investigations.
- m.* Each amendment, revision, or repeal of the foregoing.

2-3. Requirements pertaining to the information to be published

The following procedures will be completed before submitting rules and regulations for publication—

a. An economic analysis of the proposed or existing regulation. The analysis should assess the effects of the regulation on the State, local, and tribal governments and the private sector. An analysis threshold of an annual effect on the economy of \$100 million or more has been established for all regulations (EO 12866).

b. Regulations that contain requirements for the collection of information will be forwarded through RMDA to the Office of Management and Budget (OMB) before publication as a proposed rule in the FR. In addition, the proponent will address any collection of information comments filed by the Director, OMB or the public in the final rule.

c. Statutory and nonstatutory authorities mandate regulatory review of all DA proposed, interim, final, and withdrawn rules and regulations. The results are published in the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions. Under the requirements of regulatory review, the proponent will notify RMDA when—

- (1) Drafting a regulation that would affect the public.
- (2) Reviewing regulations for revision or rescission.
- (3) Rescinding a regulation.

2-4. Incorporation by reference

a. Incorporation by reference allows the proponent to comply with the requirements to publish regulations in the FR by referencing materials published elsewhere (for example, materials that may be purchased from the U.S. Government Publishing Office (GPO) or depository libraries or are available for review at Army installations). Incorporated material has the same force and legal effect as any other properly issued regulation. Before a document can be incorporated by reference, the proponent must determine that it is available to the public (see 5 USC 552(a) and 1 CFR Part 51).

b. Material is eligible for incorporation by reference if it—

- (1) Is published data, criteria, standards, specifications, techniques, illustrations, or similar material.
- (2) Is reasonably available to and usable by the class of persons affected by the publication.
- (3) Does not reduce the usefulness of the FR publication system.
- (4) Benefits the Federal Government and members of affected classes.
- (5) Substantially reduces the volume of material published in the FR.

c. Incorporation by reference is not acceptable as a complete substitute for promulgating in full the material required to be published. It may, however, be used to avoid unnecessary repetition of published information already reasonably available to the class of persons affected. Examples include:

- (1) Construction standards issued by a professional association of architects, engineers, or builders.
- (2) Codes of ethics issued by professional organizations.
- (3) Forms and formats publicly or privately published and readily available to the person required to use them.

d. Proposals for incorporation by reference will be submitted to RMDA by letter giving an identification and subject description of the document statement of availability indicating the document will be reasonably available to the class of persons affected, where and how copies may be purchased or examined, and justification for the requirement to incorporate by reference. The request will be submitted to RMDA at least 25 working days before the proposed date for submission of the incorporation by reference notice for the FR. The 25-working day period begins when RMDA receives the request.

e. RMDA will consult with the Director, OFR concerning each specific request and will notify the proponent of the outcome of the consultation.

f. The proponent will submit to RMDA a general notice upon approval from the Director, OFR to the proposal for incorporation by reference.

g. Requirements for updating material incorporated by reference include:

- (1) Publication of an amendment to the CFR in the FR.
- (2) The proponent must give RMDA a copy of the incorporated material, as amended or revised, to submit to the OFR.
- (3) RMDA will notify the Director, OFR of the changes.

h. The proponent will notify RMDA within 10 working days if the rule does not go into effect or when the rule containing the incorporation by reference is removed.

2-5. Exceptions

a. The Army will not publish rules in the FR that—

(1) Involve any matter pertaining to a military or foreign affairs function of the United States that has been determined under the criteria of an EO or statute to require a security classification in the interests of national defense or foreign policy.

(2) Involve any matter relating to DA management, personnel, or public contracts, including nonappropriated fund contracts.

(3) Constitute interpretive rules; general statements of policy; or rules of organization, procedure, or practice.

(4) Interpret a rule already adopted by a higher element within DA or by the Department of Defense (DOD).

b. A rule issued at the installation level that affects only the people near a particular post does not ordinarily apply to the general public; therefore, the Army does not usually publish it in the FR.

c. It is not necessary to publish in the FR any information that comes within one or more of the exemptions to the FOIA (5 USC 552(b)), as implemented by AR 25-55 (FOIA exemptions).

2-6. Procedures

All matters to be published in accordance with this chapter will be submitted to RMDA in the proper format outlined in appendices B and C. As provided in paragraph 1-4c(3), Army Civil Works proponents who are proposing rules for publication in 33 and 36 CFR may submit the required documents directly to OFR but must otherwise comply with the provisions of this regulation.

2-7. Effect of not publishing

The Army cannot require the general public to comply with, or be adversely affected by, a policy or requirement, as determined in paragraph 2-2, until it is published in the FR.

Chapter 3

Inviting Public Comment on Certain Proposed Rules and Submission of Petitions

3-1. General

Public comment must be sought on certain proposed rules that are required to be published in accordance with chapter 2. All regulations affecting the public will be forwarded to RMDA for review and coordination with OMB. Before initiation of any rulemaking actions, the proponent must work through RMDA to obtain approval from the DOD regulatory policy officer (RPO) (see app G). This chapter sets forth the criteria and procedures for inviting public comment before publication.

3-2. Applicability

a. These provisions apply only to those DA rules or portions thereof that—

(1) Are promulgated after the effective date of this regulation.

(2) Must be published in the FR in accordance with chapter 2.

(3) Have a substantial and direct effect on the public or any significant portion of the public.

(4) Do not merely implement a rule already adopted by a higher element within DA or by DOD.

b. Unless otherwise required by law, the requirement to invite advance public comment on proposed rules does not apply to those rules or portions that meet any of the criteria that follows:

(1) Do not come under the purview of paragraph 3-2*a*.

(2) Involve any matter pertaining to a military or foreign affairs function of the United States, which has been determined under the criteria of an EO or statute to require a security classification in the interests of national defense or foreign policy.

(3) Involve any matter relating to DA management, personnel, or public contracts (for example, the Armed Services Procurement Regulation, including nonappropriated fund contracts).

(4) Constitute interpretative rules, general statements of policy, or rules of organization, procedure, or practice.

(5) The proponent of the rule determines for good cause that inviting public comment would be impracticable, unnecessary, or contrary to the public interest. This provision will not be used as a convenience to avoid the delays inherent in obtaining and evaluating prior public comment (see para 3-8).

3-3. Procedures when proposing rules

a. A description of the proposed rule will be forwarded to RMDA for regulatory and OMB review. RMDA will obtain and provide to the proponent a regulation identifier number (RIN), used to identify and report the rule in the Unified Agenda before submission to the RPO for approval. RMDA will obtain a docket number from R&AMO and incorporate it into the proposed rule. The proponent will provide a completed Unified Agenda Information Worksheet

to assist the Federal Register Liaison Officer (FRLO) in completing the entries for the Unified Agenda (see app F). Proposed rules that have unresolved issues will not be published in the FR.

b. Before initiating any rulemaking actions, the proponent must work through RMDA to obtain approval from the DOD RPO (see app G). The proponent will provide a copy of the certification package to the FRLO. The package contains a copy of the certification memorandum (signed by a principal staff assistant (PSA)) coordinated with their servicing legal office (see app G; rule data sheet), which provides a summary for the RPO and addresses specific requirements in EO 12866 and a copy of the proposed rule. The proponent will coordinate the package with the Office of General Counsel (OGC) and provide a copy of the documentation showing OGC coordination and concurrence. The proponent will prepare the preamble and proposed rule. Preparation of the preamble and proposed rule will be in accordance with guidance in appendices B and C.

c. Public comment will be invited within a designated time, no less than 60 days before the intended adoption of the proposed rule.

d. Rulemaking proponents will submit the original and three copies of the proposed rule and preamble, in the prescribed format, to RMDA. RMDA will ensure that the approved rules comply with 5 USC Chapter 6; 44 USC Chapter 15; FR and executive and legislative requirements; and have the necessary coordination with OMB before publication. Upon OMB approval, RMDA will certify and submit the documents to the OFR for publication as a proposed, interim, or final rule, as applicable.

e. If no action has occurred within 1 year of publication, the proposed rule will be considered for withdrawal, unless the proponent provides justification to RMDA. If the proponent determines that the proposed rule should be withdrawn, the proponent will submit a document to RMDA to be published in the FR withdrawing the proposed rule. The withdrawal of the proposed rule will be reported in the next edition of the Unified Agenda.

f. The Civil Works projects under the ASA (CW) will submit updated and proposed Unified Agenda items to RMDA.

3-4. Office of Management and Budget control number

Each rule OMB reviews under the PRA is assigned an OMB control number, which becomes its identifier throughout its life.

3-5. Consideration of public comment

a. Following publication of a notice of proposed rulemaking, all interested persons will be given an opportunity to participate (60 days) in the rulemaking through the submission of written data, views, and arguments to the proponent of the proposed rule concerned.

b. If the proponent of the rule determines that it is in the public interest, a hearing or other opportunity for oral presentation of view may be allowed as a way to facilitate public comment. Informal consultation by telephone or otherwise may also be used to facilitate presentation of oral comments by interested persons. All hearings or other oral presentations will be conducted by the proponent of the rule in a manner he or she prescribes. A hearing file will be established for each hearing. The hearing file will include:

- (1) Public notices issued.
- (2) Request for the hearing.
- (3) Data or material submitted in justification thereof.
- (4) Materials submitted in opposition to the proposed action.
- (5) Hearing transcript.
- (6) Any other material as may be relevant or pertinent to the subject matter of the hearing.

c. There is no requirement to respond, either orally or in writing, individually to any person who submits comments with respect to a proposed rule. The proponent of the rule, however, may do so at his or her discretion.

3-6. Procedures when publishing adopted rules

a. After careful consideration of all relevant material submitted, the proponent of the rule will make such revisions to the proposed rule that appear necessary in light of the comments received.

b. If it is impractical for the proponent to finalize the rule after the comment period, because of extensive unresolved issues, the proponent will publish a document withdrawing the proposed rule.

c. The proponent will prepare a preamble for publication with the final rule. The proponent will discuss in the preamble the comments received in response to the proposed rule and the decision to accept or reject the comments in the revision to the proposed rule. Preparation will be in accordance with guidance in appendices B and C.

d. Before initiating any rulemaking actions, the proponent must work through RMDA to obtain approval from the DOD RPO (see app G for procedures). The proponent will provide a copy of the certification package to the FRLO. The package contains a copy of the certification memorandum (signed by a PSA) coordinated with their servicing legal office (see app G); rule data sheet (see app G), which provides a summary for the RPO and addresses specific requirements in EO 12866; and a copy of the final rule. The proponent coordinates the package with OGC and the

Office, Chief of Legislative Liaison (OCLL) if an interim or final rule and provides a copy of the documentation showing OGC and OCLL coordination and concurrence.

e. The original and three copies of the preamble and revised final rule will be forwarded to RMDA in the proper format. RMDA will then prepare the required certification and submit the documents to the OFR for publication in the form of an adopted rule.

f. The proponent will provide RMDA with a copy of the final rule, three original signed copies of a completed OMB Form, “Submission of Federal Rules Under the Congressional Review Act” (available at <http://www.gao.gov/decisions/majrule/fedrule2.pdf>), and a concise statement about the rule within 14 days of publication in the FR. The proponent will identify whether it is a major or a substantive/nonsignificant rule, its proposed effective date, significant issues of interest, and a cost-benefit analysis of the rule, as applicable. RMDA will submit a copy of all final rules to both Houses of Congress and the GAO in accordance with the CRA.

g. When proposing rules governed by paragraph 1–4*c*, Army Civil Works rulemaking proponents may forward the documents prescribed in paragraphs 3–6*e* and *f* directly to the OFR. Army Civil Works proponents are responsible for submitting a copy of the final rules to Congress and GAO in accordance with paragraph 3–6*f*.

3–7. Submission of petitions

Each proponent of a rule will grant to any interested person the right to submit a written petition calling for the issuance, amendment, or repeal of any rule to which this chapter applies or would apply if issued, as specified in paragraph 3–2. The proponent will fully and promptly consider any such petition. If compatible with the orderly conduct of public business, the appropriate official may, at his or her discretion, allow the petitioner to appear in person for the purpose of supporting this petition. After considering all relevant matters, the proponent will advise the petitioner in writing of the disposition of any petition, together with the reasons supporting that disposition. This provision does not apply to comments submitted on proposed rules in paragraph 3–5.

3–8. Cases in which public comment is impractical

a. Whenever a rulemaking proponent determines for good cause that inviting public comment on a proposed rule would be impractical, unnecessary, or contrary to the public interest, the proponent will prepare a brief statement of the reasons supporting this determination for incorporation in the preamble to the adopted rule. The preamble and adopted rule will then be published as outlined in paragraphs 3–6*c*, 3–6*d*, and 3–6*e*.

b. Alternatively, the proponent may ask RMDA (by memorandum) to adopt and publish in the FR a separate rule exempting from the prepublication notice provisions of this regulation those specific categories of rules the rulemaking proponent has determined that public comment would be unnecessary, impractical, or contrary to public interest. The request to RMDA will contain an explanation of the reasons the proponent believes that a particular category of rule or rules should not be published in proposed form for public comment and a legal review by the proponent’s servicing legal office. If RMDA, in coordination with OGC, agrees that public comment should not be invited with respect to the cited category, the proponent will adopt and publish a separate rule in the FR exempting such rule or rules from the requirements of this regulation. This separate rule will include an explanation of the basis for exempting each particular category from the provisions of this regulation.

Appendix A References

Section I Required Publications

AR 25–55

The Department of the Army Freedom of Information Act Program (Cited in para 2–5c.)

AR 25–400–2

The Army Records Information Management System (ARIMS) (Cited in para 1–9.)

EO 12630

Government Actions and Interference With Constitutionally Protected Property Rights (Cited in fig B–2.) (Available at [http://www.archives.gov/federal-register/executive-orders.](http://www.archives.gov/federal-register/executive-orders))

EO 12866

Regulatory Planning and Review (Cited in para 1–1.)
(Available at [http://www.archives.gov/federal-register/executive-orders.](http://www.archives.gov/federal-register/executive-orders))

EO 12988

Civil Justice Reform (Cited in fig B–2.) (Available at [http://www.archives.gov/federal-register/executive-orders.](http://www.archives.gov/federal-register/executive-orders))

EO 13045

Protection of Children From Environmental Health Risks and Safety Risks (Cited in fig B–2.) (Available at [http://www.archives.gov/federal-register/executive-orders.](http://www.archives.gov/federal-register/executive-orders))

EO 13132

Federalism (Cited in fig B–2.) (Available at [http://www.archives.gov/federal-register/executive-orders.](http://www.archives.gov/federal-register/executive-orders))

EO 13211

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Cited in fig B–2.)
(Available at [http://www.archives.gov/federal-register/executive-orders.](http://www.archives.gov/federal-register/executive-orders))

EO 13563

Improving Regulation and Regulatory Review (Cited in para 1–1.)
(Available at [http://www.archives.gov/federal-register/executive-orders.](http://www.archives.gov/federal-register/executive-orders))

1 CFR 21.21

General requirements: References (Cited in para D–7c.) (Available at [http://www.gpoaccess.gov/cfr/index.html.](http://www.gpoaccess.gov/cfr/index.html))

1 CFR Part 51

Incorporation by Reference (Cited in para 2–4a.) (Available at [http://www.gpoaccess.gov/cfr/index.html.](http://www.gpoaccess.gov/cfr/index.html))

41 CFR Part 102–3

Federal Advisory Committee Management (Cited in para E–1a(2).) (Available at [http://www.gpoaccess.gov/cfr/index.html.](http://www.gpoaccess.gov/cfr/index.html))

2 USC 1532

Statements to accompany significant regulatory actions (Unfunded Mandates Reform Act of 1995) (Cited in fig B–2.)
(Available at [http://uscode.house.gov.](http://uscode.house.gov))

5 USC Appendix

Federal Advisory Committee Act Section 10 (Cited in para E–1a(2).) (Available at [http://uscode.house.gov.](http://uscode.house.gov))

5 USC Chapter 6

Regulatory Flexibility Act (Cited in para 1–1.) (Available at [http://uscode.house.gov.](http://uscode.house.gov))

5 USC Chapter 8

Congressional Review Act (Cited in para 1–1.) (Available at [http://uscode.house.gov.](http://uscode.house.gov))

5 USC Subchapter II

Administrative Procedure Act (Cited in para 1–1.) (Available at <http://uscode.house.gov>.)

5 USC 552 amended by Public Law 104–231, 110 Stat. 3048

Freedom of Information Act (Cited in para 1–1.) (Available at <http://uscode.house.gov>.)

5 USC 552b

Open Meetings (Government in the Sunshine Act) (Cited in para 2–2*i*.) (Available at <http://uscode.house.gov>.)

5 USC 801

Small Business Regulatory Enforcement Fairness Act (Cited in para 1–1.) (Available at <http://uscode.house.gov>.)

42 USC Chapter 55

National Environmental Policy Act of 1969 (Cited in fig B–2.) (Available at <http://uscode.house.gov>.)

44 USC Chapter 15

Federal Register Act (Cited in para 3–3*d*.) (Available at <http://uscode.house.gov>.)

44 USC 508

Annual estimates of quantity of paper required for public printing and binding (Cited in para E–1*a*(1).) (Available at <http://uscode.house.gov>.)

44 USC 3501 et seq.

Federal Information Policy (Paperwork Reduction Act) (Cited in para 2–2*k*.) (Available at <http://uscode.house.gov>.)

44 USC 3506(c)(2)

Federal Agency Responsibilities (Cited in para E–1*a*(7).) (Available at <http://uscode.house.gov>.)

Section II

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 11–2

Managers' Internal Control Program

AR 25–30

The Army Publishing Program

AR 25–50

Preparing and Managing Correspondence

AI 102

Office of the Secretary of Defense (OSD) Federal Register (FR) System (Available at <http://www.dtic.mil/whs/directives>.)

DA Pam 25–40

Army Publishing: Action Officers Guide

DODI 5025.01

DOD Issuances Program (Available at <http://www.dtic.mil/whs/directives>.)

EO 13175

Consultation and Coordination With Indian Tribal Governments
(Available at <http://www.archives.gov/federal-register/executive-orders>.)

EO 13212

Actions to Expedite Energy-Related Projects (Available at <http://www.archives.gov/federal-register/executive-orders>.)

Federal Register

(Available at <http://www.gpo.gov/fdsys/search/home.action>.)

Federal Register Document Drafting Handbook

(Available at <http://www.archives.gov/federal-register/write/handbook/>.)

Public Law 107–347

E–Government Act (Available at <http://www.gpo.gov/fdsys/>.)

United States Government Printing Office Style Manual

GPO Style Manual (Available at <http://www.gpoaccess.gov/stylemanual/>.)

33 CFR

Navigation and Navigable Waters

36 CFR

Parks, Forests, and Public Property

Section III

Prescribed Forms

This section contains no entries.

Section IV

Referenced Forms

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate Web site (<http://www.apd.army.mil>).

DA Form 11–2

Internal Control Evaluation Certification

DA Form 260

Request for Publishing

DA Form 2028

Recommended Changes to Publications and Blank Forms

OMB Form

Submission of Federal Rules Under the Congressional Review Act (Available at <http://www.gao.gov/decisions/majrule/fedrule2.pdf>.)

Unified Agenda Information Worksheet

(Available at <http://www.dtic.mil/whs/directives/infomgt/regulatory/files/process/uasheet.doc>.)

Appendix B

Preparation of Rulemaking Documents

B–1. General

The Federal Register Act (44 USC Chapter 15) and the APA (5 USC Subchapter II) define the requirements for notices and the promulgation of proposed, interim, and final rules in the FR system. The rulemaking document is an announcement to the public that the Army proposes to amend the CFR, and interested individuals are given an opportunity to comment on the development of the final amendment. Generally, the proposed rulemaking document will become the adopted rule; therefore, careful consideration should be given to correct format and the Army and user viewpoint.

a. Chapters separate each title of the CFR and each chapter is numbered in Roman numerals (I, II, III, and so forth); they can be divided by subchapter, if required, and are lettered in capitals (A, B, C, and so forth) to group related parts.

b. Each chapter or subchapter is divided into parts, numbered in Arabic numerals and assigned to chapters as follows: chapter I, parts 1 to 199; chapter II, parts 200 to 299; chapter III, parts 300 to 399; and so forth (see fig B–1).

c. Each part consists of a consolidated body of rules applying to a single function of DA. When required, subparts are identified by capital letters to group related elements of information.

d. Section numbers (within parts) include the number of the part set off by a decimal point preceded by the symbol “§” (section symbol). For example, Part 400, Section six, is expressed “§ 400.6.” The section is the basic unit of the CFR and should consist of a short, clear presentation of one regulatory proposition.

e. Sections are divided into paragraphs. All paragraphs are indented and can be subdivided into the designations shown in table B–1. Sections consisting of a single paragraph are not designated; however, multiple undesignated paragraphs are not permitted, because they are difficult to cite in other parts of the CFR.

Table B–1
Paragraph subdivisions

Term	Symbol
Paragraph	(a), (b), (c), and so forth.
For further subdividing of a paragraph	(1), (2), (3), and so forth.
	(i), (ii), (iii), and so forth.
	(A), (B), (C), and so forth.
	(1), (2), (3), and so forth.
	(i), (ii), (iii), and so forth.
For easier reading, detailed subdividing (more than three levels) of a section is to be avoided when possible in favor of shorter, better-expressed sections.	

CFR Title	→	Title 32–National Defense
CFR Subtitle	→	Subtitle A–Department of Defense (Continued)
Chapter	→	CHAPTER V–DEPARTMENT OF THE ARMY
		(Parts 400-629)
—————		
Subchapter	→	SUBCHAPTER A–AID OF CIVIL AUTHORITIES AND PUBLIC RELATIONS
Part	→	<i>Part</i> 400-500 [Reserved] 504 Obtaining information from financial institutions 505 Army Privacy Act Program 507 Manufacture and sale of decorations, medals, badges, insignia, commercial use of heraldic designs and Heraldic Quality Control Program 508 Competition with civilian bands 510 Chaplains 516 Litigation 518 The Army Freedom of Information Act Program 525 Entry authorization regulation for Kwajalein Missile Range
		SUBCHAPTER B–CLAIMS AND ACCOUNTS
		534 Military court fees 536 Claims against the United States 537 Claims on behalf of the United States 538 Military payment certificates
		SUBCHAPTER C–MILITARY EDUCATION
		542 Schools and colleges 543-544 [Reserved]

Figure B–1. Examples of basic subdivisions of the Code of Federal Regulations

B–2. Format

- a. Use 8½- by 11-inch single-sided white paper.
- b. Number all pages consecutively.
- c. One-inch margins at the top, bottom, and right side; the left side margin is 1–1/2 inches.
- d. Double space all primary text and single space:
 - (1) Table of contents.
 - (2) Quoted material set apart from regular text.

- (3) Footnotes and notes to tables.
- (4) Tables.
- (5) Examples.
- (6) Formulas.
- (7) Authority citations.
- (8) Signature and title.

e. Rulemaking documents should be written clearly and concisely. A separate action must be submitted for each type of document to be published in the FR (for example, “Proposed Rules,” “Rules and Regulations,” and “Notices).” Documents that would appear in two different categories of the FR will not be combined; instead, it is recommended that they cross-reference each other.

B–3. Billing code

Billing codes allow GPO to be reimbursed for documents published in the FR. The billing code should be the first heading on the first page of your document. Your organization assigns the billing codes.

B–4. Signature

a. Rulemaking documents will be signed by the head of a DA staff agency or the commander of an ACOM, their authorized representatives, or other designated officials at the subordinate level as authorized by AR 25–50 for correspondence.

b. The signature block will be placed on a page that includes some material that can be identified with the text. Do not place the signature block on a separate page from the text. The signature block will consist of the issuing official’s typed name, grade, and position title for military officials or position title for civilian officials. When someone other than the issuing official signs (for) the document, the actual signer’s name and title must be typed underneath the signature; the OFR will reject any document that is signed incorrectly.

B–5. Capitals

The following guidance will be followed in use of capitals:

- a. The title “FEDERAL REGISTER” when the dates are to be computed by the FR.
- b. CHAPTER and PART HEADINGS are typed in all capitals for rules documents.
- c. PREAMBLE CAPTIONS are typed in all capitals in rulemaking and notice documents.

B–6. Underlining

a. Do not underline for emphasis, for names of books, or when foreign phrases are used. Use quotation marks for names of books, journals, articles, and similar items.

b. The following may be underlined:

- (1) Scientific terms.
- (2) Ordering paragraphs or statements.
- (3) Paragraph headings may be underlined; however, they must be underlined consistently within the section.
- (4) Court cases.
- (5) Definitions (only the terms).
- (6) Reference to the FR.

B–7. Illustrations, forms, and tables

a. Maps, diagrams, graphs, or other pictorial material will be included in documents only when necessary for compliance purposes, or where they aid in understanding. If an illustration is essential, the original artwork or a clear reproduction must accompany the original document and copies. If an amendment is made to the illustration at a later date, a new drawing must be submitted with the amendment.

b. Tables and forms should be prepared according to the “*United States Government Printing Office Style Manual*.” The GPO Style Manual is also available at www.gpoaccess.gov/stylemanual/browse.html.

c. Original artwork for a proposed rule or notice will be returned only if the proponent attaches a memo and a self-addressed envelope to the original document requesting that the OFR return the artwork. Original artwork for an interim or final rule will not be returned; the OFR uses it in the CFR.

B–8. Abbreviations

a. Follow this guidance for abbreviations used in documents created as part of the FR process:

- (1) “FR” is “Federal Register.”
- (2) “CFR” is “Code of Federal Regulations.”
- (3) “U.S.C.” is “United States Code.”
- (4) “Pub. L.” is “Public Law.”

- (5) “Stat.” is “U.S. Statutes at Large.”
- (6) “A.M. or P.M.” is time designation.
- (7) “E.O.” is “Executive order.”
- (8) “Proc.” is “Proclamation.”
- (9) “Sec.” is section of a public law or the USC.

b. Abbreviations for “Pub. L.,” “E.O.,” and “Proc.” are used only in the authority citation; otherwise spell them out.

B–9. Corrections

Minor changes can be made in typed documents by correcting all copies in ink and placing your initials in the margin opposite the change.

B–10. Requirements to publish a rule

a. The proponent of the rule will provide an electronic version of the rule to RMDA for editorial review. RMDA will edit and reformat the rule and return the electronic version with the recommended changes.

b. A statement verifying that the rule will be coordinated with appropriate officials and OGC before submission for publication must be provided to RMDA.

c. RMDA submits the original document to the OFR, and it becomes a part of the National Archives of the United States. The document should be typed and have the appearance of a formal document prepared for public inspection. Photocopies may be used as originals provided the copies are high quality and each copy is signed in ink.

d. Two legible copies must be submitted with the original. The issuing official can sign all copies (duplicates of originals) or RMDA can certify the copies as true copies of the original signed document.

e. Disk submission must be included with the paper copies and must include the following:

- (1) A verification/certification statement is included in the publication request.
- (2) The Microsoft Word file is on a compact disc-read-only memory.
- (3) The rule must be the only file on the disk.
- (4) The file must be in Microsoft Word 6.0 or later. The OFR can process files created from the 2003, 2007, and 2010 editions of Microsoft Word.
- (5) The disk is properly labeled: name of agency; filename; file format (Microsoft Word); and name, CFR citation, or RIN corresponding to the paper document.

f. The questionnaire in appendix F must be completed and submitted to RMDA for each rule within 14 days of publication date in the FR.

B–11. Preamble requirements

a. The proponent submitting a notice of proposed, interim, or final rule document for publication will prepare a preamble that will inform the public, who is not an expert in the subject area, of the basis and purpose for the notice or rule.

b. The preamble will be in block style format and contain the information shown in figure B–2.

c. The body text of the rule will be included before the date and signature block for short amendments. For long and involved rules, include the body text after the signature block.

d. If implementing a joint rule, the two or more agencies must be identified in the heading and preamble of the rule. The authorized official of each agency must sign the rule.

e. You may or may not invite public comments when drafting a proposed or interim rule. For a proposed rule requesting public comments, the public comment period will not be less than 60 days from the date of publication (EO 12866, Section 6(a)(1)).

f. All EOs and Federal Acts that may be applicable to the Army will be addressed in the preamble. RMDA will provide you with a list of current orders and acts.

g. By answering the following questions, the drafter can prepare a preamble that explains the actions taken:

- (1) What action is being taken? Why? What will be its intended effect?
- (2) Are instructions provided for public participation? Will any formal or informal hearings be held?
- (3) Did the comments received on the proposal substantiate the need for it?
- (4) How many comments supported the proposal? How many opposed it? What types of groups were for it or against it?
- (5) Did the comments received on the proposal bring out any additional facts or information?
- (6) Will the persons affected or target audience understand the proposal?
- (7) Were any alternatives suggested as a result of the proposal? Do any of them require further consideration? Are the reasons for their rejection or adoption explained?
- (8) Are there any agency-developed changes in the final rule that were not in the proposal? Are they fully explained?

- (9) Were all of the significant comments received on the proposal discussed and answered?
(10) Were applicable statutes addressed?
(11) Have you cited any related documents and provided their FR citations?

Sample Preamble-Rule

BILLING CODE: 3710-08 (Army); 3720-58 (Corps of Engineers)

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR (Part or Subpart No.)

RIN (Regulation Identifier No.)

[Docket No. USA-xxxx-xxxx]

(Title of the rule)

AGENCY: Department of the Army, DoD (agency's name).

ACTION: Proposed, Final, or Interim Final Rule.

SUMMARY: The Department of the Army proposes to amend its regulations to [insert a brief summary of what the regulation is about]. [Agency or command name] is amending (or revising or adding) the regulations because (insert a brief summary of why the agency is taking this action). Do not include citations to statutes or the CFR (other than the current document). If a court action caused the revision, do not include legal citations. The regulations will describe the intended effect of the document, not how it affects the CFR. In this discussion, refer to an Act of Congress by the popular name of the Act. Do not use qualifications, exceptions, or specific details. Be clear and concise.

DATES: Presents the "when" of the document, date format MMDDYYYY. It includes the dates within the document that are essential to the rulemaking proceedings. The following should be included, when applicable: 1) effective date, 2) confirmation of effective dates, 3) comment deadlines, 4) public hearings date (if any), 5) compliance dates, 6) applicability dates, and 7) other dates relevant to public knowledge of the proceeding.

ADDRESSES: Include any address the public may need to know. Addresses appropriate for inclusion include addresses for: 1) attending a public hearing (if applicable), and 2) examining any material available for public inspection. Use the

Figure B-2. Sample of Preamble-Rule format

following template when requesting comments (you may not use any other addresses or methods for submitting comments):

You may submit comments, identified by title or subject of the notice, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

FOR FURTHER INFORMATION CONTACT: Insert contact's name and telephone number.

SUPPLEMENTARY INFORMATION:

a. Executive Summary:

1. Purpose of the Regulatory Action:

- i. The need for the regulatory action and how the action will meet that need.
- ii. Succinct statement of legal authority for the regulatory action.

(Explain, in brief, the legal authority laid out later in the preamble.)

2. Summary of the Major Provisions of the Regulatory Action in Question:

Each major provision should be described clearly and separately, along with a brief justification.

3. Costs and Benefits: For economically significant regulatory actions, please include a table summarizing the assessment of costs and benefits, both quantitative and qualitative.

b. Background: Limit this discussion to the historical and present situation necessitating the proposed rule. It should include a statement about the statutory authority supporting the rule, any court cases that apply, and prior proposed rulemakings on the issue that are still outstanding and how they relate to this proposal.

c. Public Comments Procedures: Describe the procedures the public is to use to provide comments.

d. Discussion of Proposed Rule: This discussion should state what the rule would do and why DA is proposing the rule. It should include a specific, section-by-

Figure B-2. Sample of Preamble-Rule format (continued)

section analysis of how the proposed rule affects [agency's name] customers and how it changes existing regulatory provisions. For example, if a particular section is being deleted because it duplicates provisions from a statute or another regulation, the duplicated regulation or code section should be cited.

e. *Procedural Requirements:* Under this section, the proponent must address each statute or E.O. listed below and its relevance to the proposed rule. He or she must also comply with any other requirements of the statute or E.O. if he or she determines in consultation with the servicing legal office, that it is applicable. If it does not apply, state so and explain why.

Regulatory Flexibility Act:

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601, *et seq.* to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic effect, either detrimental or beneficial, on a substantial number of small entities. The proponent must determine if the proposed rule meets the threshold requirements of the act that requires the preparation of a Regulatory Flexibility Analysis. If it does not apply, so state. It is recommended that this determination be made in consultation with the servicing legal office.

Unfunded Mandates Reform Act:

Under section 202 of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. § 1532, agencies must prepare a budgetary impact statement to accompany any proposed rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. If it applies, the provisions of the UMRA must be met; if it does not apply, so state. It is recommended that this determination be made in consultation with the servicing legal office.

National Environmental Policy Act:

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*, contains specific and detailed requirements for agencies implementing any rules or regulations that may adversely affect the environment. If NEPA does not apply, so state.

Figure B–2. Sample of Preamble-Rule format (continued)

It is recommended that this determination be made in consultation with the servicing legal office.

Paperwork Reduction Act:

The Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35, requires all Federal agencies to obtain approval from OMB before implementing rules that require the collection of information from the public. If the proposed rule involves collection of information from the public, coordination with OMB and various other requirements must be accomplished before publication in the FR. If the PRA does not apply, so state. It is recommended that this determination be made in consultation with the servicing legal office.

Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights):

The proponent must determine if the proposed rule represents a Government action capable of interference with constitutionally protected property rights and which may cause the taking of private property. If the taking of private property will result, a Takings Assessment and other requirements of the E.O. must be met. In some instances the military is exempt from this order. If no private property rights are impaired as a result of the proposed rule, so state. It is recommended that this determination be made in consultation with the servicing legal office.

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review):

The proponent must determine if the proposed rule is significant under the criteria set forth in the E.O. Additional information and suggested wording for “Not Significant” and “Significant” rules are provided below. It is recommended that this determination be made in consultation with the servicing legal office.

Not Significant: According to the criteria listed in section 3(f) of E.O. 12866, [agency’s name] has determined that the proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to OMB review under section 6(a)(3) of the E.O.

Significant: This proposed rule is a significant regulatory action under section 3(f) of E.O. 12866 and requires an assessment of potential costs and benefits under section

Figure B–2. Sample of Preamble-Rule format (continued)

6(a)(3) of that E.O. [If the proposed rule is significant under E.O. 12866, include a summary of the initial regulatory impact analysis, and state that [agency's name] has placed the full analysis on file in the [agency's name] Administrative Record at the address specified previously (see "ADDRESSES"). E.O. 12866 defines a "significant regulatory action" as a rule that may: 1) Have an annual effect on the economy of \$100 million or more; 2) Adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; 3) Create a serious inconsistency or otherwise interfere with other agency action; 4) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of entitlements, grants, user fees, or loans; or 5) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.]

Executive Order 12988 (Civil Justice Reform):

The proponent does not need to refer to this E.O. in the preamble, but for any major action the administrative record should include evidence that the requirements of this E.O. were considered. See the E.O. for a list of the requirements. Briefly, the standards to meet are: 1) Eliminate drafting errors; 2) Eliminate needless ambiguity; 3) Minimize needless litigation (describe any statutes of limitation, preemptive effects, effects on existing Federal law, and so on); 4) Provide clear and certain legal standards for affected conduct; and 5) Promote simplification and burden reduction.

(Not Applicable) [agency's name] has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.)

Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks):

E.O. 13045 requires each Federal agency to make it a high priority to identify and assess environmental health and safety risks that may disproportionately affect children and ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health or safety risks. If the rule applies, then the procedures outlined in the E.O. must be met. If it does not apply, so state. It is recommended that this determination be made in consultation with the servicing legal office.

Figure B-2. Sample of Preamble-Rule format (continued)

Executive Order 13132 (Federalism):

The proponent must determine if the proposed rule will have a substantial effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government. If the proposed rule has a substantial effect on the above, a Federalism Assessment and various other requirements of the E.O. must be met. If it does not apply, so state. It is recommended that this determination be made in consultation with the servicing legal office.

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution or Use):

The proponent does not need to refer to this E.O. in the preamble, but for any major action the administrative record should include evidence that the requirements of this E.O. were considered. Briefly, a statement of energy effects will be prepared by agencies and submitted to the Administrator of the Office of Information and Regulatory Affairs, OMB, for any significant energy matters that: 1) Will adversely affect energy supply, distribution, or use should the proposal be implemented; and 2) Relate to reasonable alternatives to the action with adverse energy effects and expected effects of such alternatives on energy supply, distribution, and use. See the E.O. for a list of the requirements.

The principal author of this rule is (principal author, agency's mailing address, telephone. (This portion is optional.)

Figure B-2. Sample of Preamble-Rule format (continued)

List of Subjects in 32 CFR part XXX

(insert list of subjects)

Provides a common vocabulary for indexing rulemaking documents and is the basis for the CFR Index prepared by the OFR. It is the last item in the SUPPLEMENTARY INFORMATION section.

Dated:

(Signature of Official)

(Title)

(Words of Issuance)

Accordingly, the Department of the Army proposes to amend 32 CFR part XXX as set forth below:

Or

For reasons discussed in the preamble the Department of the Army proposes to amend 32 CFR part XXX as follows:

[Regulatory Text]

Heading: **PART 502 – RELIEF ASSISTANCE** (State heading for each part, subpart, section, and appendix that is amended.)

Section (Table of Contents)

502.1 Purpose and applicability.

502.2 Definitions.

1. The authority citation for Part 502 reads as follows: Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012.

2. State item that is amended, revised, or removed text or provide the new regulatory text added to the CFR.

§ 502.1 Purpose and applicability.

(a) Sections 502.1 through 502.5 contain Department of the Army

Figure B–2. Sample of Preamble-Rule format (continued)

B-12. Information services

The examples used in this regulation may not apply to all rulemaking documents. Additional examples and instructions are in the FR Document Drafting Handbook, which is available at <http://www.archives.gov/federal-register/index.html>.

Appendix C Procedures for Proposed Rulemaking Document

C-1. Drafting proposed rules

A proposed rulemaking document includes:

a. A preamble giving the reader an explanation of the proposal; a statement of the time, place, and nature of public proceedings (hearings, opportunity to submit written comments, or both); and other information required by paragraph B-11.

b. Appropriate headings as shown in figure B-2.

c. Table of contents (see para D-4*b* and fig D-1).

d. Authority citation (see para D-8).

e. Words of issuance as discussed in paragraph D-2.

f. Date of issuance and signature.

g. Full text of the proposed rule, amendment, or revision. If amending or revising a current CFR unit, the proponent may republish unchanged text of the unit to provide a context for the amendment or revision (see para D-3*g*).

C-2. Documents that affect proposals

a. A document that amends, supplements, or in any way affects previously published proposals (other than adoption documents) must also be published in the “Proposed Rules” section of the FR. The document should be prepared with the same headings as the prior proposal document. The text must include specific reference to the previous proposal document, citing the FR volume and page.

b. Documents that affect proposals include those which:

(1) Extend time for comments.

(2) Notify of a meeting or hearing.

(3) Change the date or place of meetings or hearings.

(4) Suspend, stay, terminate, or withdraw the rulemaking proceeding.

(5) Correct the text.

(6) Supplement a proposal.

C-3. Advance notice of proposed rules

a. An advance notice of proposed rulemaking is a preliminary inquiry before the issuance of a specific notice of proposed rulemaking. It is used to give the public an opportunity to participate in the decisions about whether a rule change is necessary.

b. The advance notice of a proposal document is prepared in the same manner as a proposed rule. Explain the need for rulemaking and issues involved, and use specific questions for expert commentators to answer.

C-4. Incorporation by reference

a. Incorporation by reference allows the proponent to comply with publication requirements by referring to materials published elsewhere. Material incorporated by reference has the same effect as any other properly published rule and must have prior approval from the Director, OFR. The document drafted will—

(1) Contain the words “incorporated by reference.”

(2) State the standard and/or material to be incorporated by: title, date, edition, author, publisher, and identification number of the publication.

(3) State where and how copies can be examined and obtained.

(4) Refer to 5 USC 552(a).

(5) State that the Director, OFR has approved the incorporation by reference.

(6) Refer to the incorporation by reference in the DATES caption and the SUPPLEMENTARY INFORMATION section.

- (a) The Dates statement must include the effective date of the document and the date approved by the Director, OFR. These dates are always the same.
- (b) The list of subjects in the SUPPLEMENTARY INFORMATION section must include the words “incorporation by reference.”
 - b. When updating material incorporated by reference, you must notify RMDA and submit:
 - (1) An amendment to the CFR to be published in the FR in accordance with the requirements in appendix B.
 - (2) Two copies of the amended or revised incorporated material with your amendment.

Appendix D Procedures for Adopted Rule Document

D–1. Drafting adopted rules

An adopted rule publication must include the following:

- a. *Billing code.* Used by GPO to bill for printing documents in the FR.
- b. *Appropriate headings.* The heading ties the document to the CFR and alerts the reader to the subjects covered (see app B for placement and content).
- c. *Preamble.* The preamble provides the “who, what, where, why, and when” of the rule. The captions of the preamble are to remain in the order shown in appendix B.
 - (1) The preamble identifies DA, a specific command, and/or an office as the proponent of the rule.
 - (2) If the adopted rule was published in the FR as a proposed rule, the preamble of the adopted rule must specifically reference the proposed version, citing the FR publication date and page number.
 - (3) The RIN used in the proposed rule should be used for the adopted rule.
 - (4) A preamble describes the contents of the document in layman’s language. It should provide a concise general statement of the basis and purpose of the rule.
 - (5) The preamble explains the relationship of the adopted rule to the proposed rule, including the nature and effect of any relevant public comments.
 - (6) It should contain an effective date, compliance date, or comment deadlines for an interim rule, or direct final rule; expiration dates, as applicable; and any other dates that may concern the public.
 - (7) The preamble provides addresses (street address and email or Web site) for submitting comments, meetings, or where material for public inspection is available.
 - (8) It provides the names and telephone number(s) of the proponent(s). At the discretion of the proponent, email and street addresses can also be provided.
- d. *The list of subjects.* The OFR uses the list of subjects to index the adopted rule in the CFR. It is the last item in the SUPPLEMENTARY INFORMATION section. Do not include a list of subjects when correcting previous documents and changing nomenclature.
- e. *Words of issuance.* (See para D–2.) (Effective date may appear here.)
- f. *Body of text.*
 - (1) Headings for each part, subpart, section, and appendix amended.
 - (2) Table of contents.
 - (3) Authority citation. States under what authority the Army is changing the CFR.
 - (a) *Statutory.* Public law and USC.
 - (b) *Nonstatutory.* Presidential executive and administrative orders, Presidential memorandums, DOD or DA policies or directives, OMB circulars, CFR regulations.
 - (4) Effective date (may appear here if required in body text).
 - (5) Amendatory language (see para D–3).
 - (6) Text. All paragraphs should be indented, lettered, and/or numbered.
 - (7) OMB control number. Required when rule contains collection of information requirements from the public.
 - (8) Pages. All pages should be numbered.
- g. *Signature.* Printed name and title of signer.
- h. *Date signed, optional.* (See apps B and E for examples.)

D–2. Words of issuance

The term “words of issuance” refers to the language in the document by which a codified document is legally prescribed and tied to the CFR. The words of issuance describe the general effect of the document and are always in the present tense because the document itself is the act of promulgation. The language usually precedes the text but may also appear in the amendatory language preceding individual amendments. It should contain the CFR title number, chapter number, and subchapter number (if applicable) affected by the document. The action should be clearly stated;

for example: “Accordingly, for reasons stated in the Preamble, under the authority of 49 USC 31132, 32 CFR Part 619, Program for Qualifying DOD Freight Motor Carriers, Surface Freight Forwarders, Shippers Agents, and Freight Brokers, is removed in its entirety.”

D-3. Amendatory language

The text of a document must conform to the text of the CFR. The amendatory language uses standard terms to identify and describe the specific changes being made to the CFR. Eight of the most common terms used as words of issuance are defined and illustrated below. Examples of amendatory language are in table D-1.

a. *Amend.* “Amended” means that a CFR unit-title, subtitle, chapter, part, subpart, section, or paragraph is partially changed.

b. *Add.* “Added” means a new unit or item is being inserted into the CFR.

c. *Nomenclature change.* Used to change term or phrase throughout the CFR unit, such as an office title or designation.

d. *Correct.* “Corrected” means the correction of a typographical or clerical error in a recently published document. This should be handled as a change; refer to the published document by identifying headings, date of publication, and FR page.

e. *Redesignated.* “Redesignated” means a CFR unit is being transferred to another position and assigned a new number. This should not be used merely to fill in the gaps created by removals or to make room for additions. See paragraph D-5 for designating additions. Any major redesignations should be discussed in advance with the RMDA staff.

f. *Remove.* “Remove” means an existing CFR unit is being deleted from the CFR because its authority has expired, the requirement no longer exists, or it has been legally terminated.

g. *Republish.* “Republish” is used when publishing an unchanged CFR unit to provide the context for the amendment for the reader. The republished unit must be republished accurately.

h. *Reserve.* “Reserve” is used to fill in the gap of text which was removed or to indicate where new or future text will be added to the CFR.

i. *Revise.* “Revise” means that a CFR unit is completely rewritten and is being presented in full text.

j. *Stay.* “Stayed” is used when the compliance date is temporarily postponed or the previous CFR unit is being restored.

k. *Suspend.* “Suspended” indicates a CFR unit is temporarily or indefinitely on hold. A suspended CFR unit is not enforceable.

l. *Withdraw.* “Withdrawn” means a rule that has not gone into effect (that is, a proposed rule) and is being removed from the FR system. This term is not used for existing units in the CFR or for final rules that have passed their effective dates. Rules that are withdrawn are not enforceable.

**Table D-1
Use of amendatory language**

Amendatory language	Usage
Amend	Amend § 500.20 to remove paragraph (b)(5) and revise paragraph (c)(2) to read as follows:
Add	1) Add new paragraph (c)(3) to § 500.20 to read as follows: 2) Add § 500.20 to Subpart B to read as follows:
Nomenclature change	In part 500, revise all references to “Information Management Officer” to read “Director of Information Management.”
Correct	On June 26, 2002, 67 FR 0000, in the third column, in § 501.20 (b)(5), correct “Director” to read “Deputy Director.”
Redesignated	1) PART 490 [REDESIGNATED AS PART 500 AND AMENDED] 2) Redesignate Part 490 as Part 500 and revise it to read as follows: 3) Remove §§ 500.20 through 500.23 and redesignate §§ 501.24 through 501.27 as §§ 500.20 through 501.23, respectively.
Remove	1) § 500.20 [REMOVED] 2) In § 500.20, remove paragraph (b)(5).
Republish	§ 500.20 is republished as follows:
Reserve	Subpart B - [Removed and Reserved]
Revise	1) Revise Subpart B to read as follows: 2) Revise § 500.20 (b)(5) to read as follows:

Table D-1
Use of amendatory language—Continued

Amendatory language	Usage
Stay	Effective June 1, 2002, 32 CFR §§ 500.20 and 500.22 are stayed until January 1, 2003.
Suspend	The provisions of 32 CFR § 500.20 are suspended pending outcome of hearing.
Withdraw	Proposed rule 32 CFR Part 490 published on June 26, 2002, 57 FR 0000 is withdrawn.

D-4. Organization

a. Overall organization of text. Material in documents must be drafted exactly as it is to appear in the CFR. The structure of the CFR is covered in appendix B. The substantive text follows the table of contents. Rules should be organized in a logical and orderly arrangement that will promote reader understanding and facilitate reference. While no blueprint exists for all rules, many can be arranged in some variation as follows:

- (1) Statement of applicability, policy, or purpose, if necessary.
- (2) Definitions.
- (3) Important general rules-positive requirements sequenced in order of time or other logical arrangement.
- (4) Exceptions, exemptions, subordinate provisions, or negative provisions, important enough to be stated as separate sections.
- (5) Results of compliance or noncompliance. An example of logical arrangement follows (see table D-2).

Table D-2
Logical arrangement

Arrangement	Section numbers
1. and 2. Introductory Material	1.1–1.3 Nature Purpose Scope Applicability Definitions
3. Primary Substance	1.11–1.13 Positive requirements in order of time or other logical sequence
4. Other Provisions	1.21–1.23 Exceptions Exemptions Prohibitions
5. Benefits or Sanctions	1.31–1.33 The direct results of compliance or noncompliance

b. Table of contents. The table of contents will list the section, subpart, and appendix headings in the document. This table enables the reader to quickly grasp the scope of a particular part. The table of contents should precede the citation of authority (para D-8) and is single-spaced. Material within a document must be preceded by a table of contents whenever—

- (1) A new part, subpart, or section is added.
- (2) An existing part, subpart, or section is completely revised.
- (3) Two or more sections of a subpart grouped under a center-head title are added or revised (see fig D-1). Changes to the table of contents need not be shown when single or miscellaneous sections are added or amended. This will be done automatically when the change is incorporated in the CFR.

PART 516–LITIGATION
Subpart A–General

§516.1 Purpose.

§516.2 References.

§516.3 Explanation of abbreviations and terms.

§516.4 Responsibilities.

§516.5 Restriction on contact with DOJ.

§516.6 Appearance as counsel.

§516.7 Mailing addresses.

Subpart B–Service of Process

§516.8 General.

§516.9 Service of criminal process within the United States.

§516.10 Service of civil process within the United States.

§516.11 Service of criminal process outside the United States.

§516.12 Service of civil process outside the United States.

§516.13 Assistance in the serving process overseas.

§516.14 Service of process on DA or Secretary of the Army.

Figure D–1. Example of table of contents

c. Section and paragraph headings.

(1) Give each part, subpart, section, and appendix a short, descriptive heading and place the section number and heading on a separate line above the beginning of the text. Headings are used to make it easier for the reader to find a particular provision. Together with center headings, they are carried in the table of contents to give the reader an overview of the rules.

(2) Headings are also used for paragraphs when they serve to promote understanding of the text. If one paragraph in a section is assigned a heading, all paragraphs in that section should have headings.

d. Numbering. Do not renumber CFR units to make room for additions or to close gaps after a provision is removed.

(1) In the initial assignment of numbers, leave room if you anticipate additions.

(2) To remove a typographical unit from within a rule or from within a series of rules, label the removed unit “Reserved.” This serves to maintain the integrity of a rule and avoid subsequent confusion. Renumber or reletter only when removals and other changes are so complex that a complete revision is necessary. (See table D–1 for use of “[Reserved].”)

D–5. Asterisks

a. Asterisks in a rule or proposal document represent presently codified material that will not be altered and help the reader judge the extent of an amendment.

b. Five asterisks in a row show that one or more paragraphs or a typographical unit are not being changed. Three asterisks in a row show that text within a paragraph is not being changed. The net effect of the asterisks is to create a CFR format in which the changed text alone is set forth (see example in fig D–2).

Use of five asterisks:

Shows that paragraphs (a) through (c) and the text following (d) remains unchanged.

Revise paragraph (d) of §166.15 to read as follows:

§ 166.15 State status.

* * * * *

(d) The following States issue licenses under cooperative agreements Puerto Rico, Texas, and Washington.

* * * * *

Use of three asterisks:

Shows that paragraphs (a) and (b)(1) through (b)(4) and the text following (b)(5)(i) remains unchanged.

Revise § 202.3 (b)(5)(i) to read as follows:

§ 202.3 Registrations of copyright.

* * * * *

(b) * * *

(5) * * *

(i) The Library of Congress receives two complimentary copies ... of the serial.

* * * * *

Figure D–2. Example of use of asterisks

D–6. Simple narrative amendments

Amendments, such as the addition or deletion of a word or short phrase, can be accomplished by stating the amendment in narrative style. For example: In § 500.2 paragraph (a) is amended by inserting the word “or” between “property” and “services.”

D–7. References

References can be made to other CFR rules currently in effect under conditions stated below; these references must not modify the rule being referenced. If modifications are made, the rule must be published separately in its entirety.

a. Make references clear when citing provisions of the CFR. Write the specific titles, chapters, parts, sections, and paragraphs concerned. Do not make reference to “herein,” “above,” “below,” and so forth (see table D–3).

b. References to material not published in the CFR or FR must give the full title of the material and a statement of its availability.

c. Cross-reference to rules from other Government agencies only if it meets any of the following conditions given in paragraphs D–7c(1) through (5), in accordance with 1 CFR 21.21:

- (1) Required by statute, court order, EO, or reorganization plan.
- (2) Exclusive legal authority to regulate subject matter is authorized to another Federal agency, but the Army needs to apply the rule to its own programs.
- (3) It improves clarity or is informational, not regulatory.
- (4) Test methods or consensus standards produced by another Federal agency have replaced or preempted private or voluntary test methods or consensus standards in subject matter area.
- (5) Reference is to a departmental level rule.

Table D–3
Examples of Code of Federal Regulations references

References to a different CFR title		
In:	In reference to:	Write:
Title 44	Title 1, Chapter I	1 CFR Chapter I.
Title 44	Title 1, Chapter I Part 17	1 CFR Part 17.
Title 44	Title 40, Chapter I, Part 2, Section 2.8	40 CFR 2.8.
Title 44	Title 40, Chapter I, Part 2, Section 2.7, paragraph (a)(2)	40 CFR Chapter 2.7(a)(2).
Title 44	The familiar name of another regulation in a different title.	In the Civil Service rules (5 CFR Chapter I).
References within the same title		
In:	In reference to:	Write:
Chapter I	Chapter II	Chapter II of this title
Part 100 (Chapter I)	Part 300 (Chapter III)	Part 300 of this title
§ 250.10 (Chapter II)	§ 300.19 (Chapter III)	§ 300.19 of this title.
References within the same chapter		
In:	In reference to:	Write:
Part 20	Part 30	Part 30 of this chapter.
§ 20.10	§ 30.19	§ 30.19 of this chapter.
§ 20.10	Subpart A of part 30	Part 30, subpart A of this chapter
References within the same part		
In:	In reference to:	Write:
§ 20.5	§ 20.15	§ 20.15.
§ 20.5	§ 20.25, paragraph (a)	§ 20.25(a).
§ 20.5	Appendix A	Appendix A of this part
References within the same section		
In:	In reference to:	Write:
Paragraph (a)	Paragraph (b)	Paragraph (b) of this section.
Paragraph (a)	Paragraph (b)(1)	Paragraph (b)(1) of this section.

D–8. Citations of authority

a. General. Each codified document must be covered by a complete citation of the authority for its issuance, including any statutory general rulemaking authority. When appropriate, it must also include any specific rulemaking authority delegated by statute and any EOs that link the statutory authority to the Army. The rulemaking proponent is responsible for supplying accurate citations and keeping them current. Changes to authority citations must be reflected by formal amendment in the same form as an amendment to regulatory text.

b. Authority citations. Authority citations should provide positive identification and ready reference in as few words as possible.

(1) *Statutory provisions.* These provisions should include:

(a) The section of the public law (if appropriate) the public law number, and the U.S. Statutes at Large. Do not cite the popular name of the public law. For example: “Authority: Sec. 5, Pub L. 89–670, 80 Stat. 931.”

(b) *United States Code.*

1. If the authority is a citation to a title of the USC that has been enacted into positive law, the references to the public law and Statutes at Large are unnecessary and should be omitted. The citation of only the USC is preferred. Cite the authority: “Authority: 10 U.S.C. 501.”

2. When the citations include two or more references (laws), separate the different references with a semicolon. Always place the USC citation first: “Authority: 5 U.S.C. 30; 10 U.S.C. 3013; 49 U.S.C. 1354; Pub. L. 89–670, 80 Stat. 931; Pub. L. 85–726, 72 Stat. 752.”

(2) *Nonstatutory provisions.* These may be Presidential EOs, agency executive delegations, or other documents that show authority to issue regulations. Citations of this type of authority should identify the class of documents, including the specific control number, and the FR volume and page where the document was published. When possible, a parallel citation to the CFR should be included. For example: “Authority: Special Civil Air Regulation SR–422A, 28 FR 6703. 14 CFR Part 46, E.O. 11130, 28 FR 12789. 3 CFR 1959–63 Comp.”

(3) *Combined statutory and nonstatutory citations.* The statutory citations will precede nonstatutory material when both are cited. For example: “Authority: Sec. 5, Pub. L. 89–670, 80 Stat. 931 (49 U.S.C. 1654); sec. 313, Pub. L. 85–726, 72 Stat. 752 (49 U.S.C. 1354); E.O. 11130, 28 FR 127898.”

c. Placement of citations. The placement of an authority citation in a document varies with the nature of the document. The following examples show the different possibilities:

(1) *Code of Federal Regulations part with a single authority.* Where the document affects the CFR part, place the authority immediately after the table of contents and before the text.

(2) *Code of Federal Regulations subpart with same authority.* Where the document affects the CFR subpart with the same authority for the part, place citation as the first numbered item in the list of amendments.

(3) *Code of Federal Regulations subpart with different authorities.* Where the document affects the CFR subpart with different authorities, place citation after the heading to the subpart and before the text.

(4) *Code of Federal Regulations sections.* Where the document affects one or more CFR sections within a part, place the authority as the first numbered item in the list of amendments for the part.

(5) *Parts removed.* When removing a part from the CFR, an authority citation must be placed in the “words of issuance.”

D–9. Effective date statements

a. General. The effective date is the date the rule or amendments affect the CFR. A clear statement of each document’s effective dates is essential for understanding and compliance.

(1) The proponent will provide an effective date for each amendment, revision, removal, and so forth, if different. Be sure the effective dates are legally permissible. It is sometimes necessary to give a section number to the effective date provision in a codified document. Do this only when the provision belongs in the CFR with other provisions of the part because it sets forth contingencies, distinctions, or other conditions under which effectiveness is determined. For example: “DATES: This rule is effective November 11, 20XX, except for § 19.2, which is effective December 20, 20XX.”

(2) Rule documents may include other dates within the document, which are essential to the rulemaking proceedings. The following should be included, when applicable: a) Comment deadlines, b) Public hearings dates, c) Compliance dates, and d) Applicability dates relevant to public knowledge of the proceedings. Place the comment and compliance dates after the effective date, for example:

“DATES: Effective Date: This rule is effective on January 4, 20XX.”

“Comment Date: Submit comments on or before November 11, 20XX.”

“Compliance Date: Mandatory compliance March 17, 20XX.”

b. Form and placement. The appropriate place for the effective date statement is in the date block of the preamble as shown in appendix B.

c. *Determining effective date.* Proponents of Army regulations must comply with DA Pam 25–40 in determining the effective date of a publication.

(1) If possible, do not tie effectiveness to publication in the FR by making it effective on the “publication date” or “xx days after publication in the FR.” Publication dates for the FR can be computed by using the following regular schedule (see table D-4):

Received in OFR	Filed for public inspection	Published in FR
Monday	Wednesday	Thursday
Tuesday	Thursday	Friday
Wednesday	Friday	Monday
Thursday	Monday	Tuesday
Friday	Tuesday	Wednesday

(2) Add 2 days for processing by RMDA. In addition, when a legal holiday intervenes, 1 additional workday is added.

(3) Dates will be computed by counting the day after the publication day as the first day and by counting each succeeding day, including Saturdays, Sundays, and holidays. However, when the final count falls on a Saturday, Sunday, or holiday, the date will be the next business day.

(4) After consideration of the above, if the proponent wishes to tie effectiveness to publication date and is not sure of that date, the OFR will supply the actual date in the published document. In such cases the effective date should be stated as follows: “The amendment takes effect on [XX DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].”

D–10. Preferred expressions

Unless you have special reasons to the contrary, use the expressions in the “Preferred Usage or Comment” column (see table D–5).

Term	Preferred usage or comment
(1) “...is directed” “it is the duty of ... to” “is authorized and directed” “it is the responsibility of ...to”	(1) “must” (use must when indicating an obligation)
(2) “is authorized to” “is entitled to” “it shall be lawful to” “is entitled to”	(2) “may” (use may to indicate when a discretionary right, privilege, or power is given)
(3) “in case” “in the event that” “provided, provided that”	(3) “if”
(4) “in a case in which” “in the case of” “in a situation which” “on the occasion” “during periods when” “whenever”	(4) “when,” “where” (use “whenever” or “wherever” only when emphasizing the exhausting or recurring applicability to the proposition)
(5) “for the reason that” “based on the fact that” “due to the fact that” “as a result of” “on account of” “owing to the fact that” “reason is because”	(5) “because,” “because of,” “due to,” or “since”

Table D-5
Usages—Continued

Term	Preferred usage or comment
(6) “pursuant to” “as prescribed by” “by virtue of” “under the provisions of” “in accordance with procedures set forth in”	(6) “under”
(7) “the provisions of section.”	(7) “section”
(8) “as of” “by means of” “by virtue of” “not later than”	(8) “by”
(9) “in order to” “as a means of” “in an effort to” “so as to” “with the purpose of”	(9) “to”
(10) “accorded”	(10) “given”
(11) “deem”	(11) “consider”
(12) “specified” (in the sense of “mentioned” or “listed”)	(12) “named”
(13) “commence,” “institute,” “inception,” “initial”	(13) “start” or “begin”
(14) “prior to” “previously” “previous”	(14) “before”
(15) “subsequent”	(15) “later”
(16) “subsequent to” “after the conclusion of”	(16) “after”
(17) “shall be considered to be”	(17) “is”
(18) “per annum” “per day” “per man” “per person”	(18) “a year” “a day” “a man” “a person”
(19) “all of”	(19) “all”
(20) “as a basis for” “in the amount of”	(20) “for”
(21) “provisions of law”	(21) “law”
(22) “attains the age of”	(22) “becomes years of age”
(23) “on his own application”	(23) “at his request”
(24) “calculate”	(24) “compute”
(25) “render”	(25) “make”
(26) “is (shall be) applicable”	(26) “applies”
(27) “on and after July 1, 1971”	(27) “after June 30, 1971”
(28) “from July 1, 1971”	(28) “after June 30, 1971”
(29) “purchase”	(29) “buy”
(30) “full and adequate”	(30) “full”
(31) “successfully completes” or “passes”	(31) “completes” or “passes”
(32) “in the course of”	(32) “during”
(33) “echelons”	(33) “levels”

Table D-5
Usages—Continued

Term	Preferred usage or comment
(34) “chairman” “fireman” “husband (or wife)” “journeyman” “manpower” “mother (or father)”	(34) “chair” “firefighter” “spouse (or same sex domestic partner as designated by the Soldier)” “trainee” “human resources” or “labor force” “parent”
(35) “party”	(35) Avoid, if you mean “person”

D-11. Preferred word usage

- a. “Must” and “may”: If a discretionary right, privilege, or power is conferred, use “may.” If a right, privilege, or power is abridged, use “may not.” If an obligation to act is imposed, use “must.” Avoid the common practice of using a negative subject with an affirmative “must.” Don’t say “A person must not . . .,” say “A person may not . . .”
- b. “Any,” “each,” “every,” and so forth (technically known as “pronominal indefinite adjectives”): Should be used only where necessary. When their use is necessary, follow these conventions:
- (1) If a right, privilege, or power is conferred, use “a” or “any” (for example, “any person may ...”).
 - (2) If an obligation to act is imposed, use “each” (for example, “each applicant shall ...”).
 - (3) If a right, privilege, or power is abridged, or an obligation to abstain from acting is imposed, use “No ... may” (for example, “No operator may ... or A ... may not.”)
- c. “Such”: Although the word “such” is commonly used in legal writing as a “demonstrative” (a word pointing at something already referred to), this use is not considered to be the best practice, because it is a stilted “legalistic” way of saying something better expressed by “the,” “that,” “these,” “it,” “them,” and so forth, and it is easily confused with the more appropriate uses of the word as a synonym, when followed by “a” or “as” for “that kind of.”
- d. “Terms and conditions,” “sole and exclusive,” “authorized and empowered,” “authorized and directed,” “necessary and desirable,” and so forth: Avoid pairs of words having the same effect or one of which includes the other.

Appendix E

Preparation of General Notice Documents

E-1. General information

- a. General notices are documents containing information applicable to the general public that are not codified in the CFR. Notices do not contain regulatory text or impose requirements with general applicability and legal effect, nor do they affect rulemaking. Some notices are required by law to be published in the FR; others are published to provide information to the public. Typical notice documents are:
- (1) Open, partially open, and closed meetings. Meetings that require publication under 5 USC 552b must be published at least 1 week before the date of the meeting; meetings that require publication under 44 USC 508 must be published 15 days before date of meeting.
 - (2) Advisory committees. Establishment and renewal of advisory committee are published in accordance with 5 USC Appendix and 41 CFR Part 102-3.
 - (3) Issuance or revocation of licenses.
 - (4) Availability and granting of patent applications.
 - (5) Availability of environmental impact statements.
 - (6) Orders or decisions.
 - (7) PRA notices are published at least 60 days in advance of submission of the clearance package to OMB (44 USC 3506(c)(2)); this report is submitted by the Army reports clearance officer.
- b. Definitive drafting guidance is not available because of the wide variety of notice documents. However, notice documents have similar elements to rulemaking documents, and the information in appendices B and C will be helpful in drafting notices (see fig E-1).
- (1) Use 8½- by 11-inch single-sided white paper.
 - (2) Number all pages consecutively.
 - (3) One-inch margins at the top, bottom, and right side; the left side margin is 1-1/2 inches.
 - (4) Double-space all primary text and single space:
 - (a) Quoted material.
 - (b) Footnotes and notes to tables.

- (c) Tables.
 - (d) Examples.
 - (e) Formulas.
 - (f) Authority citations.
 - (g) Signature and title.
 - (5) Quoted material is single-spaced, centered-block style, with no quotation marks.
- c. Procedures for publishing notices in the FR are similar to rulemaking documents—
- (1) Two legible signed copies must be submitted with the original. RMDA is authorized to certify the copies as originals.
 - (2) Photocopies may be submitted as originals provided they are of high quality and each copy is signed in ink.
 - (3) Disk submission must be included with your paper copies (see para B-10e for requirements).

Sample Format - Notice

BILLING CODE: 3710-08 (Army); 3720-58 (Corps of Engineers)

DEPARTMENT OF DEFENSE

Department of the Army (Standard)

Department of the Army; Corps of Engineers (U.S. Army Corps of Engineers usage)

(Title or Subject of the notice)

AGENCY: Department of the Army, DoD (agency's name).

ACTION: Notice of availability, intent, meeting, and so on.

SUMMARY: Provide a brief summary of the what, why, and intended effect of the action (amending a previous notice, announcement of meeting, granting a patent, and so on). Include authority citations in the shortest form giving DA the authority to issue the notice; however, do not use legal citations. For notices only, you may cite public law, popular law name (Acts of Congress), or the U.S. Statutes at Large, in addition to statutory and nonstatutory authorities. (Citation can appear in parentheses.) Use language a non-expert will understand. Be clear and concise. Do not include qualifications, exceptions, or specific details. Supporting information, details, discussions, and so on belong in the SUPPLEMENTARY INFORMATION section.

DATES: Presents the “when” of the document, date format MMDDYYYY. It includes the dates within the document that are essential to the notice. List no more than four dates under this caption. If more than four dates are listed, place under the SUPPLEMENTARY INFORMATION section under a heading call “Meetings.” The following should be included, when applicable: 1) Effective date, 2) Confirmation of effective dates, 3) Comment deadlines, 4) Public hearings date (if any), and 5) Other dates relevant to public knowledge of the proceeding. The OFR computes and inserts dates tied to the FR publication. If you want the OFR to compute a date insert the

Figure E-1. Example of notice document format

following: [INSERT DATE XX DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Include any address the public may need to know. Addresses appropriate for inclusion include addresses for: 1) Mailing public comments, 2) Hand delivering public comments, 3) Attending a public hearing (if applicable), and 4) Examining any material available for public inspection.

FOR FURTHER INFORMATION CONTACT: Insert contact's name and telephone number.

SUPPLEMENTARY INFORMATION: Include background information and necessary details in this section. Use descriptive headings to organize topics and text. If referencing the FR or CFR, use abbreviations and formats provided in AR 25-58, appendix B.

Dated: (optional)

(Signature of Official)

(Title)

Figure E-1. Example of notice document format (continued)

E-2. Drafting general notices

All general notice documents include the:

- a. Billing code.
- b. Preamble headings, in the same order as rulemaking documents (see paras B-11 and D-1c.)
- c. Authority citation; for example, Army regulations, policy, and so forth (see para D-1f(3)).
- d. Body text.
- e. Signature.
- f. Printed name and title of signer.
- g. Date signed, optional (see figs E-1 and E-2 for examples of notice documents).

Sunshine Act Meetings

AGENCY: Agency holding meeting.

TIME AND DATE: Time format 8:30 AM and Date format MMDDYYYY.

PLACE: Street address of meeting location.

STATUS: Open or closed to the public.

MATTERS TO BE CONSIDERED: Provide a brief summary of the what, why, and intended effect of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Insert contact's name and telephone number.

(If the same agency is announcing multiple meetings, repeat the TIME AND DATE, PLACE, STATUS, AND MATTERS TO BE CONSIDERED headings.

Dated: (optional)

(Signature of Official)
(Title)

Figure E-2. Example of Sunshine Act document format

E-3. Sunshine Act meetings

Sunshine Act notices are published in compliance with 5 USC 552b(e)(3). This notice has a different format than the other meeting notices (see figs E-2 and E-3).

Sample Format - Meeting

BILLING CODE: 3710-08 (Army); 3720-58 (Corps of Engineers)

DEPARTMENT OF DEFENSE

Title or Subject of Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting, closed meeting, or partially open meeting.

SUMMARY: State the name of committee and include authority citations in the shortest form giving DA the authority to hold the meeting; however, do not use legal citations. You may cite public law, popular law name (Acts of Congress), or the U.S. Statutes at Large, in addition to statutory and nonstatutory authorities. (Citation can appear in parentheses.)

Dates: Date format MMDDYYYY.

Time: Time format 8:30 AM.

Location: Provide the mailing address, including appropriate building and room number or name, of the meeting facility.

Purpose of the Meeting: This should be a short description of what the meeting is about; you do not need to list the agenda.

Agenda: Provide a brief summary of the what, why, and intended effect of the meeting.

FOR FURTHER INFORMATION CONTACT: Insert contact's name and telephone number.

Figure E-3. Example of meeting document format

SUPPLEMENTARY INFORMATION: Include background information and necessary details in this section. Use descriptive headings to organize topics and text. If referencing the FR or CFR, use abbreviations and formats provided in AR 25-58, appendix B. If more than four dates are listed, place in this section under a heading called “Meetings.”

(Signature of Official)
(Title)

Figure E-3. Example of meeting document format (continued)

E-4. Effective date statements

Many notice documents do not involve a specific time of effectiveness. When they are necessary, write them in the date section of the preamble.

Appendix F Unified Agenda and Regulatory Plan Questionnaire

F-1. General

The Unified Agenda is a consolidated OMB document published in the FR consisting of agency rulemakings that have a public effect and interest. Consult your general counsel, staff judge advocate, or legal advisor for assistance.

F-2. Questionnaire

The proponent must complete a Unified Agenda Information Worksheet (<http://www.dtic.mil/whs/directives/infomgt/regulatory/files/process/uasheet.doc>) to assist the FRLO in completing the entries for the Unified Agenda.

Appendix G

Processing Requirements and Procedures for Rulemaking Actions

G–1. General

The DOD RPO is responsible for monitoring regulatory activities within DOD to ensure uniform compliance with the implementation of executive and legislative requirements and priorities, including the specific requirements of EO 12866. All rulemaking will be approved by the DOD RPO before any review by OMB. The DCMO is the functional proponent for the Regulatory Program and will manage the operational requirements of the rule approval process. The Office of the DCMO, Directorate for Oversight and Compliance, R&AMO administers the program on behalf of the DCMO. R&AMO reviews, processes, and forwards the rule submission package to the DCMO as the RPO and monitors all DOD rulemaking under consideration at OMB. Specific procedures for Army proponents follows.

G–2. Proponent procedures

The proponent will perform the following procedures:

a. Proponents will provide a completed Unified Agenda Information Worksheet to the FRLO before initiating any rulemaking action in order for the FRLO to obtain a RIN. This information sheet is at <http://www.dtic.mil/whs/directives/infomgt/regulatory/files/process/uasheet.doc>.

b. After coordinating with the servicing legal office, the proponent will submit the certification memorandum and legal review to the appropriate PSA(s) (or comparable signature level) with responsibility for the subject matter of the rulemaking. This official will certify that the provisions of EO 12866 have been satisfied. A sample of the certification memorandum is at <http://www.dtic.mil/whs/directives/infomgt/regulatory/index.htm>.

c. The proponent submits the certification package signed by the PSA to OGC for review. For interim and final rules, the certification package must be coordinated with OCLL.

d. The proponent provides the FRLO with the documentation certifying compliance with EO 12866.

e. The proponent will provide a completed rule data sheet. A sample of the rule data sheet is at <http://www.dtic.mil/whs/directives/infomgt/regulatory/index.htm>.

f. The proponent submits by email a copy of the assembled certification package to the Army's FRLO. A portable document format (PDF) of the signed certification memo is appropriate.

g. The certification package will consist of the:

(1) Certification memorandum signed by the PSA showing coordination with the servicing legal office. A sample of the certification memorandum is at <http://www.dtic.mil/whs/directives/infomgt/regulatory/index.htm>.

(2) Documentation showing OGC coordination and concurrence.

(3) Rule data sheet. A sample of the rule data sheet is at <http://www.dtic.mil/whs/directives/infomgt/regulatory/index.htm>

(4) Text of the rule properly formatted for publication in the FR.

G–3. Army Federal Register Liaison Officer procedures

The Army FRLO will perform the following procedures:

a. Upon OGC and OCLL concurrence, the FRLO will submit the packet through R&AMO to the RPO requesting approval to publish rule.

b. Upon RPO approval, the FRLO will provide the proponent with a copy of the signed approval for his or her records.

c. The FRLO submits the rule to OMB for review and approval to publish the rule in the FR.

d. Upon OMB approval, the FRLO submits the rule to the FR for publication.

e. The FRLO will provide the proponent with monthly updates on the status of his or her submission.

Appendix H Internal Control Evaluation

H-1. Function

The function covered by this evaluation is preparation of rule packages for submission to the FRLO for proposed and final rules.

H-2. Purpose

The purpose of this evaluation is to assist the proponent in evaluating the key internal controls listed. It is intended as a guide and does not cover all controls.

H-3. Instructions

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, simulation, or other). Answers that indicate deficiencies must be explained and the corrective action identified in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that the evaluation has been conducted must be accomplished on a DA Form 11-2 (Internal Control Evaluation Certification).

H-4. Test questions

- a.* Has the proponent completed and provided the FRLO with a Unified Agenda Information Worksheet?
- b.* Has the proponent coordinated and obtained PSA approval of rulemaking action and submitted the packet to OGC and OCLL for review and approval?
- c.* Has the proponent provided the FRLO with a complete certification package (paras G-2g(1) through (4))?

H-5. Supersession

This is a new evaluation for AR 25-58.

H-6. Comments

Help make this a better tool for evaluating internal controls. Submit comments to Director, Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Room 102, Alexandria, VA 22315-3860.

Glossary

Section I Abbreviations

AASA

Administrative Assistant to the Secretary of the Army

ACOM

Army command

AI

administrative instruction

APA

Administrative Procedure Act

AR

Army regulation

ASA (CW)

Assistant Secretary of the Army (Civil Works)

CFR

Code of Federal Regulations

CRA

Congressional Review Act

DA

Department of the Army

DCMO

Deputy Chief Management Officer

DOD

Department of Defense

DODD

Department of Defense directive

DOJ

Department of Justice

EO

executive order

FDMS

Federal Docket Management System

FOIA

Freedom of Information Act

FR

Federal Register

FRLO

Federal Register Liaison Officer

GAO

Government Accountability Office

GPO

Government Publishing Office

NEPA

National Environmental Policy Act

OCLL

Office, Chief of Legislative Liaison

OFR

Office of the Federal Register

OGC

Office of General Counsel

OMB

Office of Management and Budget

PDF

portable document format

PRA

Paperwork Reduction Act

PSA

principal staff assistant

R&AMO

Regulatory and Audit Matters Office

RFA

Regulatory Flexibility Act

RIN

regulation identifier number

RPO

regulatory policy officer

RMDA

Records Management and Declassification Agency

UMRA

Unfunded Mandates Reform Act

USACE

U.S. Army Corps of Engineers

USC

United States Code

Section II**Terms****Adopted rule**

A rule the Federal agency has agreed to implement, after consideration of relevant information presented. This document presents the decision of the issuing agency (see “Final Rule”).

Amendatory language

Words or phrases used to describe specific changes to be made to the CFR (see para D-3).

Authority citation

The Legislative, Regulatory, Secretarial, or Executive authority to sanction or approve the issuance of a rule (see para D-8).

Code of Federal Regulations

The annual codification of rules published by each Federal agency. It is divided into 50 titles representing broad subject areas for each Federal agency. These titles are further subdivided into chapters, subchapters, parts, and subparts. For example, Title 32, National Defense, Chapter V, contains DA rules.

Closed meeting

A meeting that is closed to the public.

Federal Docket Management System

A Web-based application that provides the public with a way to file electronic comments on rulemaking and notice documents that are published in the FR.

Federal Register

A daily Federal workday publication, which contains four categories of documents: rules, proposed rules, notices, and Presidential documents. These documents are created by Federal agencies and the Office of the President and are made available to the public due to public interest and to encourage public participation in the rulemaking process.

Final rule

A document published in the FR and CFR stating the adoption of a proposed rule or interim final rule by a Federal agency. This document presents the decision of the issuing agency and addresses public comments.

Interim final rule

A document that is effective immediately without prior publication as a proposed rule, usually to respond to an emergency situation or as a result of a legislative or executive requirement. This document may request comments. An interim final rule must be published as a final rule to become permanent and incorporated into the CFR. If any changes were made to the interim rule as a result of comments received, a discussion of comments should be included.

Joint rule

Documents implementing jointly administered programs or activities. An authorizing official from each Federal agency signs the document when two or more agencies are identified in the preamble of the rule.

Major rule

Any regulatory action (proposed, interim final, or final rule) that is likely to (a) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, environment, public health or safety, or State, local, or tribal governments or communities; (b) create a serious inconsistency or interfere with an action taken or planned by another agency; (c) alter materially the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or (d) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in EO 12866. *NOTE: Also referred to as a "Significant rule."*

Notice

A document containing information of general public interest that is not codified in the CFR, such as a meeting or patent availability. The document does not contain regulatory text, impose requirements with general applicability or legal effect, or affect rulemaking proceedings. Some notices are required by law to be published in the FR. See definitions for open and closed meetings.

Open meeting

A meeting that is open to the public.

Preamble

The introductory information of all documents published in the FR that answers the "who, what, where, when, and why" of the document for the reader's convenience. The preamble contains captions that must appear in a specific order to ensure consistency in the FR (see apps B and E).

Proposed rule

A draft document of a rulemaking action that is published in the FR requesting public comment.

Regulation identifier number

A document number OMB assigns to a regulatory action published in the Unified Agenda of Federal Regulations and the CFR.

Regulatory Plan

A statement that identifies significant regulatory actions a Federal agency expects to issue in proposed or final format that fiscal or forthcoming fiscal year in accordance with EO 12866.

Rule

A regulatory document that intends to implement, interpret, or prescribe law or policy, or describe procedures or requirements having general applicability to, and future legal effect on, the public that is published in the FR and codified in the CFR. See definitions for “Interim final rule,” “Proposed rule,” “Final rule,” and “Major rule.”

Substantive/nonsignificant

A rulemaking action that has substantive impact but the magnitude of the impact is less than significant. These rulemaking actions are not economically significant, will not be reviewed under EO 12866, and are not, at present, an agency priority.

Unified Agenda of Federal Regulations

A consolidated OMB document published in the FR consisting of published rules that have significant public effect and interest in accordance with EO 12866.

Section III**Special Abbreviations and Terms****et seq.**

and the following

Stat.

U.S. Statutes at Large

§

section symbol

UNCLASSIFIED

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