1.1 Purpose. This chapter provides guidance for the preparation and clearance of Federal Register documents. The purpose of publishing documents in the Federal Register is to inform the tribes and the public of the policies, events, organization, functions, and rules of Indian Affairs (IA) which affect them.

1.2 Scope. This policy applies to all functions under the authority of the Assistant Secretary-Indian Affairs (AS-IA), including the Bureau of Indian Affairs (BIA) and the Bureau of Indian Education (BIE).

1.3 Policy. IA offices developing, amending, or repealing Federal Register notices, significant guidance documents, and rules must coordinate with the Office of Regulatory Affairs and Collaborative Action (RACA) as the designated **Federal Register Liaison** for IA. RACA reviews all Federal Register documents originating from IA programs in accordance with 318 DM, chapters 1-3, and the 318 DM Handbook.

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

1.4 Federal Register Documents.

A. Type of Federal Register Documents.

1. **General Notices.** General notices are issued to advise the public of an event or information that may be of public interest or concern including, but not limited to, notices of tribal consultation meetings, notices of agency action on tribal liquor control ordinances and gaming compacts, notices of distribution plans of judgment funds awarded by the Court of Claims to any Indian tribe, notices of intent, notices of availability, and notices of Federal acknowledgment findings. The material in general notices is usually not regulatory, or a significant guidance document, and does not establish requirements to be followed. Some notices are required by law or regulation to be published in the Federal Register.

2. **Information Collection Notices.** Information collection or record keeping requirements imposed on the public are subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 as amended and 5 CFR 1320. The PRA requires that notices requesting comments on information collections and recordkeeping requirements be published in the Federal Register.

   In general, **two** Federal Register notices must be published by IA in support of an Information Collection Clearance Package:

a. First, IA must publish a notice providing the public with **60 days** to comment on information collection and recordkeeping requirements. This notice directs the public to submit comments to IA.

b. Second, after the Department submits the Information Collection Clearance Package to OMB, IA must publish another Federal Register notice informing the public of the submission and providing **30 additional days** to comment on the collection requirements. This notice directs the public to submit comments to OMB, with a copy to IA.

Additional information on the Federal Register notices required for Information Collection Clearance Packages can be found in 318 DM 4 and 318 DM 6.

3. **Guidance Documents.** Guidance documents may be published in the Federal Register to notify the public when they are established, amended, or repealed. OMB requires publication of significant guidance documents.

4. **Proposed Rules.** Proposed rules are published in the Federal Register to give the public an opportunity to comment on them before they become final rules.

5. **Final Rules.** Final rules are published in the Federal Register to give the public notice of their content and effective date. Once effective, these are permanent rules that are incorporated in the Code of Federal Regulations (CFR).

1.5 Rulemaking. A rule (also called a regulation or rulemaking) is a document published in the Federal Register to implement or interpret law or policy. When a rule is developed, amended, or repealed, the Administrative Procedure Act (5 U.S.C. 551 et seq.) generally requires that:

(1) A notice of proposed rulemaking (a proposed rule) is published in the Federal Register; and

(2) The public is allowed a chance to comment on the rule before final adoption; and

(3) A final rule indicating an effective date is published in the Federal Register.

A rule is generally published as a proposed rule first, and then as a final rule. Once a rule is effective, it is codified in the CFR and remains in effect until it is modified or repealed by publication of another rule. Some guidance documents may qualify as rules; RACA will assist IA offices in making this determination.

1.6 Negotiated Rulemaking. Negotiated rulemaking (Reg-Neg) does not replace the traditional notice and opportunity for public comment rulemaking. Rather, Reg-Neg supplements the more traditional process by developing consensus around the proposed

rule before an agency publishes it in the Federal Register. Congress passed the Negotiated Rulemaking Act to encourage each Federal agency to use negotiated rulemaking processes or other innovative rulemaking procedures that allow parties that will be significantly affected by a rule to participate in the development of the rule. The Reg-Neg process meets the intent of the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., and can facilitate more effective regulatory development and regulations. All Reg-Neg committees must meet the requirements of the Federal Advisory Committee Act (FACA), including the procedures for choosing committee members, establishing the committee, providing notice of meetings, and transparency.

Negotiated Rulemaking augments, but does not replace, the agency's rulemaking process. IA offices interested in establishing a negotiated rulemaking committee must coordinate with RACA. Rules resulting from negotiated rulemaking must:

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

1.7 Authority. The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. § 301 and § 463 and § 465, and 25 U.S.C. §2 and §9, and are redelegated to the AS-IA in 209 DM 8.

A. Statutes

1. Administrative Procedure Act (5 U.S.C.551 et seq.)
2. Paperwork Reduction Act of 1995 (PRA) as amended (44 U.S.C. 3501 et seq.)
3. National Environmental Policy Act (42 U.S.C. 4321-4347)
4. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)
5. Negotiated Rulemaking Act (5 U.S.C. §§ 561 et seq.)
6. Federal Advisory Committee Act (5 U.S.C. App. 2)

B. Code of Federal Regulations

1. 1 CFR Part 17 - Publication Schedules
2. 1 CFR Part 18 - Preparation and Transmittal of Documents Generally
3. 1 CFR Part 21 - Preparation of Documents Subject to Codification
4. 1 CFR Part 22 - Preparation of Notices and Rulemaking Proposals
5. 1 CFR Part 51 - Incorporation by Reference

6. 5 CFR Part 1320 - Controlling Paperwork Burdens on the Public
7. 13 CFR Part 121 - Small Business Size Standards
8. 40 CFR Parts 1500-1508 - National Environmental Policy Act Implementing Rules
9. 43 CFR 14 regarding public information and rulemaking.

C. Departmental Manuals

1. 200 DM - Delegations of Authority
2. 318 DM - Federal Register Documents
3. 381 DM - Origination of Records and Information

D. Guidance and Assistance. Guidance and requirements for rulemaking and publication of Federal Register documents are contained in 318 DM chapters 1-9 and the Federal Register Document Drafting Handbook. Specific assistance may be obtained from the RACA Federal Register Liaison and through RACA's intranet website: http://inside.bia.gov/Org/AS-IA/ORM/FedReg/index.htm.

Additional guidance can be found in the following White House documents:

1. Executive Order 12866, *Regulatory Planning and Review,* 1993
2. OMB Memorandum M-07-13, *Implementation of Executive Order 13422 (amending Executive Order 12866) and the OMB Bulletin on Good Guidance Practices*, 2007

1.8 Responsibilities.

A. Assistant Secretary-Indian Affairs (AS-IA) and Deputy Assistant Secretaries - Indian Affairs are responsible for ensuring that the Federal Register documents that add to, amend, or delete rules affecting IA programs are reviewed in accordance with 318 DM.

B. Directors, BIA and BIE; and Deputy Bureau Directors are responsible for the following with regard to Federal Register notices and rules related to programs under their jurisdiction:

1) Coordinating with RACA to develop rules.
2) Providing subject matter expertise and data in support of any required regulatory analysis.
3) Preparing reports, forms, determinations, justifications and clearance packages.
4) Completing and filing the necessary forms for payment of Federal Register publication costs.

5) Preparing Federal Register notices to ensure that their programs comply with the requirements of the APA and/or any applicable statutory or regulatory requirement.

6) Conducting tribal consultation on Federal Register notices, when appropriate.

7) Coordinating with RACA to conduct tribal consultation on rules, when appropriate.

8) Maintaining files of published Federal Register documents in accordance with the applicable records schedules.

C. **All Other Central Office Directors** are responsible for the following with regard to Federal Register notices and rules related to programs under their jurisdiction:

1) Coordinating with RACA to develop rules.

2) Providing subject matter expertise and data in support of any required regulatory analysis.

3) Preparing reports, forms, determinations, justifications and clearance packages.

4) Completing and filling SF-1 forms for payment of Federal Register publication costs.

5) Preparing Federal Register notices to ensure that their programs comply with the requirements of the APA and/or any applicable statutory or regulatory requirement.

6) Conducting tribal consultation on Federal Register notices, when appropriate.

7) Coordinating with RACA to conduct tribal consultation on rules, when appropriate.

8) Maintaining files of published Federal Register documents in accordance with the applicable records schedules.

E. **Regional Directors** are responsible for preparing Federal Register notices, when appropriate, to ensure that their programs comply with the requirements of the APA and/or any applicable statutory or regulatory requirement, and coordinating with their Headquarters contact to obtain RACA review.

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

1) **Federal Register Liaison** functions, including:

a) Serving as the contact point for the IA, other Bureaus, the Office of the Executive Secretariat, and the Office of the Federal Register (within the Government

Printing Office) on all matters pertaining to Federal Register documents and issuances;

b) Providing advice and assistance to IA employees on the preparation of documents;

c) Ensuring that the determination of significance and the decision on preparation of a regulatory analysis are approved by the Department's Office of Policy Analysis, and when required, that compliance statements for rules are prepared and approved as required by 318 DM 3;

d) Reviewing all documents for format and compliance with 318 DM, the Federal Register Document Drafting Handbook, 1 CFR 1-22, and any other applicable instructions;

e) Ensuring that appropriate offices are included in the review and clearance of all documents as required by 318 DM 6. Review by the Office of the Solicitor is required for Federal Register documents to determine if they are legally proper and complete, except for notices requesting comment on information collection requirements or recordkeeping requirements and any notices for which the AS-IA has ordered a waiver.

f) Coordinating the review of rules and the preparation of the semiannual agenda and other regulatory reports as required in 318 DM 2; and

g) Maintaining a resource file of published Federal Register documents pertaining to IA, and providing an electronic copy or reproducing and distributing copies when needed.

2) **Certifying Officer** and **Alternate functions include:**

a) Ensuring that three originals and a diskette containing a copy of the document are submitted to the Federal Register for publication;

b) Certifying that the version of the document on the diskette is the same as the original hard copy;

c) Certifying two copies, when only one original document is available;

d) Ensuring the date of signature, when appropriate, and the name and title of the signing official are written or stamped on the originals and any copies sent to the Federal Register;

e) Ensuring the billing code is listed on documents sent to the Federal Register.

1.9 Signatory Authority.

A. The AS-IA and Deputy Assistant Secretaries-Indian Affairs may sign all Federal Register documents, including those issuing proposed and final rules published in

Chapter 1, Title 25 of the CFR, and may delegate signature authority for routine notices to the appropriate directorate.

B. **The Director, BIA** may sign Federal Register notices relating to BIA.

C. **The Director and Deputy Director, BIE** may sign those Federal Register notices relating only to Indian Education.

D. **The RACA Director or the IA Information Collection Clearance Officer (ICCO)** may sign all information collection Federal Register notices required by the Paperwork Reduction Act.

E. **Regional Directors** may sign only those Federal Register notices not involving rulemaking. Notices signed by Regional Directors are subject to Headquarters review and coordination of their publication in the Federal Register.

Approval

DEC 10 2014

Lawrence S. Roberts
Principal Deputy Assistant Secretary – Indian Affairs

Date