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Information Management

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(Ms Patsy J. Conner)
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(Col Kevin A. Collins)
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This instruction implements AFPD 37-1, *Air Force Information Management*. It gives guidance on the overall *Federal Register* (FR) program and tells how to submit rules and notices that affect the public for publication in the FR. It also sets procedures for automatic distribution of the FR and the Code of Federal Regulations (CFR) to Air Force organizations. It explains which kinds of rules should be published in the FR after the Air Force adopts them. It implements Title 44, United States Code (U.S.C.), Chapter 15, *Federal Register and Code of Federal Regulations*; 5 U.S.C. 552(a)(1), *Administrative Procedure*; Executive Order 12866, *Regulatory Planning and Review*, September 30, 1993; Title 1, Code of Federal Regulations, Chapter 1, *Administrative Committee of the Federal Register*, current edition; DoD Directive 5400.9, *Publication of Proposed and Adopted Regulations Affecting the Public*, December 23, 1974; and DoD 5025.1-M, *DoD Directives System Procedures*, December 1990.

SUMMARY OF REVISIONS

This revision aligns the instruction under AFPD 37-1 and reorganizes the text, establishes statutory approval for submission of rules to the FR that have a substantial and direct impact on the general public, and incorporates requirements, information, and procedures formerly in AFR 4-2.

1. Legal Requirements:

1.1. The Air Force must publish in the FR all documents that have general applicability and legal effect on the public. This means any document issued under proper authority that prescribes a penalty or course of conduct; imposes an obligation; confers a right, privilege, authority, or immunity; and is relevant or applicable to the general public, the members of a class, or the persons of a locality, as distinguished from named individuals or organizations. The Air Force must publish:

1.1.1. Descriptions of the departmental and field organizations, including how to contact them, and the complete mailing addresses of organizations from which the public may get information, make submissions or requests, or obtain decisions.

1.1.2. Procedures the Air Force uses to conduct its business with the public, both formally and informally.

1.1.3. Notices of hearings and advisory committee meetings.

1.1.4. Policy directives, instructions, manuals, policy memoranda, statements of general policy, or interpretations of general applicability adopted by the Air Force, and other substantive rules that apply to the general public.

1.2. The Air Force invites the public to comment on its proposed rules and the other types of rulemaking by publishing the proposed rules in the FR to allow at least 30 calendar days for comment before adoption.

1.3. The Air Force cannot require the general public to comply with, or be adversely affected by, a requirement or policy required by 1.1. until it has been published in the FR.

1.4. A rule issued at field level that affects only people near a particular base does not ordinarily apply to the general public, so the Air Force does not usually publish it in the FR.

2. Exemptions to Inviting Public Comment:

2.1. The Air Force does not need to invite public comment on a proposed rule under the following exemptions or exceptions to the rulemaking procedures in 5 U.S.C. 553, *Rulemaking*:

2.1.1. Any matter related to a US military or foreign affairs function that, under the criteria of an Executive order or statute, requires a security classification in the interest of national defense or foreign policy.

2.1.2. Any matter related to Air Force management, Air Force personnel, or public contracts, including nonappropriated fund contracts.

2.1.3. Any matter that involves interpretative rules, general statements of policy, or rules of Air Force organization, procedure, or practice.

2.1.4. Any situation in which the Air Force finds that inviting public comment about a proposed rule is impracticable, unnecessary, or contrary to the public interest. The Directorate of Information Management (SAF/AAIA) makes this determination in coordination with Office of the General Counsel (SAF/GC).

2.2. Exceptions to the publication in the FR of adopted rules for the guidance of the public, as required by 5 U.S.C. 553, are discussed in AFI 37-131, *Air Force Freedom of Information Act Program* (formerly AFR 4-33).

2.3. Offices of primary responsibility (OPR) must publish all adopted rules for guidance of the public in the FR, even though exempt under 2.2. unless a significant or legitimate reason exists not to publish. This includes some adopted rules for the guidance of the public that were not the subject of notice and public comment.

3. Records Management Policy Branch, Directorate of Information Management (SAF/AAIA).

SAF/AAIA, 1610 Air Force Pentagon, Washington DC 20330-1610, is the Air Force liaison with the Office of the Federal Register. This branch:

3.1. Edits, codifies, and authenticates the material.

- 3.2. Submits the material to the Office of the Federal Register for publication in the FR and the CFR.
- 3.3. Sends the OPR copies of their materials published in the FR.
- 3.4. Coordinates with the Office of the General Counsel (SAF/GC) in cases where SAF/AAIA and the OPR disagree on whether to publish in the FR.
- 3.5. Approves all requests for distribution of the FR and one complete set of the CFR for each base.

4. Major Command (MAJCOM) or Field Operating Agency (FOA) Records Manager (RM). As liaison between OPR and SAF/AAIA, the RM:

- 4.1. Reviews material that OPRs submit and makes sure they comply with this instruction before sending them to SAF/AAIA.
- 4.2. Sets up suspense and follows up by contacting the OPR after the closing date to get the public comments on proposed rules.
- 4.3. Sends SAF/AAIA any changes (or reasons for not making changes) suggested in public comments.
- 4.4. Sends the final rule to SAF/AAIA within 30 calendar days after printing.
- 4.5. Sends SAF/AAIA the notices required in paragraph 7.4.6. Reviews and approves requests for the FR and one complete set of the CFR for each base.

5. OPR. When an OPR decides that a rule has a substantial and direct impact on the general public and should be published in the FR, the OPR:

- 5.1. Writes "FR" in the margin by the part that requires publication in the FR.
- 5.2. Coordinates the rule with the MAJCOM or FOA RM for review to make sure it complies with this instruction.
- 5.3. Sends an approval memorandum to SAF/AA for publication of the rule in the FR. The OPR may work this memorandum through his/her functional counterpart in HQ USAF. The memorandum must contain the legal certification information below, coordinated by the General Counsel (SAF/GC), and signed by an official appointed by the President and confirmed by the Senate (PAS):
 - 5.3.1. Certification whether the document is a major rule that has an annual effect on the economy of \$100 million or more, or certain other specified effects under E.O 12866.
 - 5.3.2. A regulatory flexibility analysis required by 5 U.S.C. 601-611, *The Regulatory Flexibility Act*, if it is determined that a rule has a significant economic impact on a substantial number of small entities. If such an analysis is not required, a *Regulatory Flexibility Act* certification explaining that determination must be signed by a PAS and submitted.
 - 5.3.3. A supporting statement for a rule containing a collection of information that includes reporting and record keeping requirements under the provisions of 44 U.S.C. 35, *The Paperwork Reduction Act*.
- 5.4. Sends the rule on a disk in ASCII format. For a proposed rule submit one double-spaced draft in addition to the disk. For an adopted rule send one published copy in addition to the disk.
- 5.5. The OPR must include the following information to be published in the preamble to the rule:

5.5.1. Action. Type of document (final rule; proposed rule).

5.5.2. Summary. Brief description of the action, why it is necessary, and what is the intended effect of the action.

5.5.3. Dates or Effective Date. Effective date of the rule or ending date for acceptance of public comments on a proposed rule (not less than 30 calendar days from publication date of the proposed rule in the FR).

5.5.4. Address. Address for mailing or hand-delivering public comments, attending a public meeting, or examining any material available for public inspection.

5.5.5. Contact. Name and commercial telephone number of a person within the agency who can answer questions about the rule.

5.5.6. Supplementary Information. Background information to explain the basis and purpose of a final rule, to give adequate notice of issues for comments in a proposed rule, and to address public comments received. State briefly why inviting public comment on a proposed rule is impractical, unnecessary, or contrary to the public interest. Include a regulatory history of the rulemaking document, stating whether:

5.5.6.1. The rule is a major rule under the requirements of E.O. 12866. Give details. If negative, include a statement. (Example: The Department of the Air Force has determined that this proposed rule is not a major rule because it will not have an annual effect on the economy of \$100 million or more.)

5.5.6.2. *The Regulatory Flexibility Act* requires a regulatory analysis. Give details. If negative, include a statement. (Example: The Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment) certifies that this rule shall be exempt from the requirements under 5 U.S.C. 601-611. In addition, this rule does not have a significant economic impact on small entities as defined by the Act.)

5.5.6.3. The provisions of *The Paperwork Reduction Act* apply. Give details. If negative, include a statement. (Example: This rule imposes no obligatory information requirements beyond internal Air Force use.)

5.5.7. Authority. Legal authority that authorizes the Air Force to issue the rule (U.S.C., Public Law, etc.).

5.6. The OPR reviews the comments received from the public and decides what changes, if any, to make in the proposed rule. Obtain proper coordination.

5.7. As the final steps, the OPR sends the final rule to SAF/AAIA within 60 calendar days after publishing the proposed rule in the FR. Address the public comments received and give the changes, or the reasons for not making changes, in the Supplementary Information section of the preamble.

5.8. The OPR notifies SAF/AAIA if a rule previously printed in the FR becomes obsolete or when another office becomes OPR.

6. Distribution Requirements:

6.1. Federal Register. Justify all requests for automatic distribution of the FR and send them through the MAJCOM or FOA RM to SAF/AAIA. Limit the number of copies that each MAJCOM or FOA

requests. Offices near each other should share one issue of the FR when possible rather than requesting individual copies. Use the copies available at most base libraries, contracting offices, and offices of the judge advocate when you can.

6.2. Code of Federal Regulations. When requested, one complete set of the CFR will be approved for each base, to be centrally located for general reference by all organizations. As with the FR, the MAJCOM or FOA RM screens all requests carefully before forwarding them to SAF/AAIA. SAF/AAIA controls distribution of the CFR (X distribution). Separate volumes may be purchased from the Government Printing Office and do not require the approval of MAJCOM/FOA RMs or SAF/AAIA. *EXCEPTION:* Civilian personnel offices must send their requirements for Title 3, CFR, *The President*, and Title 5, CFR, *Administrative Personnel*, through the Directorate of Civilian Personnel (HQ USAF/DPC, 1040 Air Force Pentagon, Washington DC 20330-1040) for approval. HQ USAF/DPC forwards a consolidated list to SAF/AAIA for distribution.

7. Notices of Hearings and Advisory Committee Meetings. See DoD Directive 5105.19, *Defense Information Systems Agency (DISA)*, June 25, 1991, for specific requirements and procedures applicable to the Air Force Committee Management Program. The OPR :

7.1. Sends the original copy and a floppy disk in ASCII format of notices through the MAJCOM or FOA RM to SAF/AAIA. Mail notices early enough to allow 2 workdays for processing at SAF/AAIA, 3 workdays for mailing to FR, 3 workdays for processing at FR, and 15 calendar days of notice before the date of the hearing or meeting. Postpone or cancel the meeting if you do not meet the 15-day requirement.

7.1.1. Allows 2 additional workdays to coordinate notices with SAF/GC for closed meetings.

7.2. Notice documents should include:

7.2.1. Title. Name of the meeting or intent of the notice.

7.2.2. Summary. Describe what action is being taken, why the action is necessary, and the intended effect of the action. Indicate whether the meeting will be opened or closed. If closed, give a reason and cite applicable law.

7.2.3. Date. Date and time of the meeting.

7.2.4. Address. Address of the meeting.

7.2.5. For Further Information Contact. The name, complete mailing address, and commercial telephone number of the action officer who can give additional information.

7.3. Notify SAF/AAIA immediately of any change in the content or status of a notice.

8. Records Management. Dispose of records created as a result of this instruction according to AFMAN 37-139, *Records Disposition--Standards* (formerly AFR 4-20, volume 2).

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Attachment 1

GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS

References

- Executive Order 12866, *Regulatory Planning and Review*, September 30, 1993
- Title 5, United States Code, Section 552(a)(1), *Administrative Procedure*
- Title 5, United States Code, Section 553, *Rulemaking*
- Title 5, United States Code, Sections 601-611, *The Regulatory Flexibility Act*
- Title 44, United States Code, Chapter 15, *Federal Register and Code of Federal Regulations*
- Title 44, United States Code, Chapter 35, *The Paperwork Reduction Act*
- Title 1, Code of Federal Regulations, Chapter 1, *Administrative Committee of the Federal Register*, current edition
- DoD Directive 5105.19, *Defense Information Systems Agency (DISA)*, June 25, 1991
- DoD Directive 5400.9, *Publication of Proposed and Adopted Regulations Affecting the Public*, December 23, 1974
- DoD 5025.1-M, *DoD Directives System Procedures*, December 1990
- AFI 37-131, *Air Force Freedom of Information Act* (formerly AFR 4-33)
- AFMAN 37-139, *Records Disposition--Standards* (formerly AFR 4-20, volume 2)

Abbreviations and Acronyms

- AFPD**—Air Force Policy Directive
- AFR**—Air Force Regulation (obsolete)
- CFR**—Code of Federal Regulations
- FOA**—Field Operating Agency
- FR**—Federal Register
- MAJCOM**—Major Command
- OPR**—Office of Primary Responsibility
- PAS**—Official Appointed by the President and Confirmed by the Senate
- RM**—Records Manager
- SAF/AAIA**—Directorate of Information Management, Policy Division
- SAF/GC**—Office of the General Counsel
- U.S.C.**—United States Code

Terms

Adopted Rule—Any rule that the Air Force can adopt without getting public comment, or that implements a higher authority directive.

Advisory Committee—Any committee, board, commission, council, conference, panel, task force, or other similar group, or their subcommittees that the Air Force forms or uses which has any members who are not full-time officers or employees of the government (see DoD Directive 5105.19).

Code of Federal Regulations (CFR)—The annual codification of final rules of the various Federal agencies. The code is divided into 50 categories by title. Title 32, *National Defense*, contains the Air Force rules. The individual issues of the *Federal Register* update the CFR. These two publications, used together, give the latest version of any rule.

Federal Register (FR)—A daily publication that provides a uniform system for the publication of Presidential and Federal agency documents that concern the public, and that are required to be published by statute. The FR includes Presidential proclamations and Executive orders, Federal agency documents having general applicability and legal effect, Federal agency documents requiring publication by act of the Congress, and other Federal agency documents of public interest.

Notice—An agency document published in the *Federal Register* that does not contain regulatory text or affect a rulemaking proceeding. The law requires that the Air Force publish certain kinds of notices; in addition, the Air Force publishes some that provide general information of public interest. Typical notice documents announce meetings, applications, issuance or revocation of a license, grant application deadlines, availability of certain environmental impact statements, certain petitions and orders or decisions affecting named parties.

Proposed Rule—Any rule that requires public comment before the Air Force adopts it, and which does not implement a higher authority directive.

Rule—Includes policy directives, instructions, manuals, and other forms of rulemaking.