

**BY ORDER OF THE SECRETARY
OF THE AIR FORCE**

AIR FORCE INSTRUCTION 33-320

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(Ms Wanda Jones-Heath, SES)

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This instruction implements Air Force Policy Directive (AFPD) 33-3, *Information Management* and establishes a Federal Register Program consistent with the requirements of OSD Administrative Instruction (AI) 201. It prescribes guidelines for identifying and the processes for submitting rules and notices that affect the public for publication in the *Federal Register* (FR), excluding those subject to the Privacy Act of 1974, System of Records Notice (Air Force Instruction (AFI) 33-332, *Air Force Privacy and Civil Liberties Program*). It also establishes procedures for automatic distribution of the FR and the Code of Federal Regulations (CFR) to Air Force (AF) organizations. This Instruction applies to all civilian employees, contractors and uniformed members of the Regular Air Force, Air Force Reserve and Air National Guard. The authorities to waive wing/unit level requirements in this publication are identified with a Tier (“T-0, T-1, T-2, T-3”) number following the compliance statement. See AFI 33-360, *Publications and Forms Management*, for a description of the authorities associated with Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the requestor’s commander for non-tiered compliance items. This publication may be supplemented at any level but all Supplements must be routed to the OPR of this publication for coordination prior to certification and approval. Ensure all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual 33-363, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule located in the Air Force Records Information Management System. Send recommended changes or comments to Secretary of the Air Force, Cyberspace Capabilities and Compliance SAF/CNZA (Compliance Division) 1800 AF Pentagon, Washington, DC 20330-

1800; route through appropriate channels, using AF Form 847, *Recommendation for Change of Publication*.

SUMMARY OF CHANGES

This document has been substantially revised and needs to be completely reviewed. Major changes include: 1) Reduced use of acronyms; 2) Changes reflecting organizational structure designation; 3) Insertion, deletion and modification of chapters; 4) Changes and updates to: Glossary of References and Supporting Information, Abbreviations and Acronyms, and Terms sections, and; 5) Elimination of grammatical errors.

Chapter 1

PROGRAM OVERVIEW AND ACCESSIBILITY

1.1. Overview. This publication establishes guidance and procedures regarding the Federal Register.

1.2. Accessibility of a publication or form.

1.2.1. The Federal Register (FR) and Code of Federal Regulations (CFR) are accessible and free, online through the Government Publishing Office Access Service at www.gpo.gov/fdsys. Hard copy subscriptions are no longer available.

1.2.2. The Federal Register *Document Drafting Handbook* is accessible online for further help on FR submissions at <http://www.archives.gov/federal-register/write/handbook/>.

Chapter 2

ROLES AND RESPONSIBILITIES

2.1. Deputy Chief Information Officer (SAF/CN).

2.1.1. Participates in the regulatory activities of the Department of Defense (DoD) and adhere to guidelines provided by the Office of the Secretary of Defense (OSD) Director of Administration and Management.

2.1.2. Determines when it is appropriate to encourage maximum participation of the public in the formulation of its documents by allowing public comments on proposed rules or notices affecting them.

2.1.3. Participates in the regulatory process and adhere to Executive Order 12866, *Regulatory Planning and Review*; Title 5 United States Code Section 601, et seq., and Title 44 United States Code Section 3501, et seq.

2.1.4. Establishes a Federal Register Liaison Office and designate an Air Force Federal Register Liaison Officer (AFFRLO) to conduct business directly with the Office of the Federal Register.

2.1.5. Publishes an AF document in the FR for public comment if it:

2.1.5.1. Confers a right or privilege on a segment of the public or has a direct or substantial impact on the public or any significant portion of the public; or

2.1.5.2. Prescribes a course of conduct that is to be followed by persons outside the government to avoid a penalty, or secure a right or privilege; or

2.1.5.3. Constitutes authority for persons outside the government to act or to secure immunity from the consequences of not acting; or

2.1.5.4. Imposes an obligation on the general public or members of a class of persons outside the government; or

2.1.5.5. Describes where the public may obtain information, instructions, or forms; make submittals or requests; take examinations; or obtain decisions pertaining to Air Force documents or publications; or

2.1.5.6. Describes procedures by which it conducts its business with the public.

2.1.6. Exemptions. Documents are not usually published in the FR if they:

2.1.6.1. Are focused toward an individual in their capacity as a Federal Agency employee or an Armed Forces member; or

2.1.6.2. Pertain to a military or foreign affairs function of the United States, determined under the criteria of an Executive Order or statute, to require a security classification in the interest of national defense or foreign policy; or

2.1.6.3. Are limited to AF organization, management, or personnel matters.

2.2. The Air Force Federal Register Liaison Officer (AFFRLO). SAF/CNZA (Compliance Division) is designated to perform FR duties and support the duties required of the AFFRLO. The AFFRLO:

- 2.2.1. Acts as the single point of contact with the Office of the FR.
- 2.2.2. Coordinates on AF documents (e.g., proposed or final rules, interim rules) requiring publication in the FR (see AFI 33-360).
- 2.2.3. Provides advice and guidance to AF personnel on publishing rules and notices in the FR.
- 2.2.4. Coordinates with the Air Force Office of General Counsel (SAF/GC) when necessary to determine whether or not a document (proposed/final rule/notice) should be published in the FR.
- 2.2.5. Ensures that rules prepared by AF organizations include certification (signed by designated officials) and statements of determination (rule is/is not significant) in compliance with Executive Order 12866 and Title 5 USC § 801 requirements.
- 2.2.6. Prepares “Submission of Federal Rules under the Congressional Review Act” for new and revised rules and submit to both Houses of Congress and the General Accounting Office in accordance with Title 5 USC § 801.
- 2.2.7. Authorizes, certifies, validates, obtains a Regulatory Identifier Number, assign billing code, and send rules and notices to the Office of the Federal Register for publication in the FR.
- 2.2.8. Maintains original certifications and statements of determination.
- 2.2.9. Sends description of rules under development to Office of Management and Budget, Office of Information and Regulatory Affairs for review in compliance with Executive Order 12866.
- 2.2.10. Coordinates recommended Office of Management and Budget changes with the originating office.
- 2.2.11. Reviews, updates, revises, and submits the AF portion of the Unified Agenda of Federal Regulations to OSD/Director of Administration and Management.
- 2.2.12. Provides a Statement of Regulatory Priorities (i.e., Presidential, Agency) and summaries of significant regulatory actions to the OSD/Director of Administration and Management for the annual Regulatory Plan in accordance with Executive Order 12866.
- 2.2.13. Provides negotiated rulemaking procedures in accordance with Title 5 USC § 561-570, et seq.
- 2.2.14. Provides a copy of the published rule or notice to OPR, if requested.
- 2.2.15. Maintains distribution lists of and approve requests for FR and CFR.
- 2.2.16. Forwards all final rules and a concise general statement to the Comptroller General of the United States, the President of the Senate, and the Speaker of the House of Representatives.

2.3. Major Command (MAJCOM), Field Operating Agency, Direct Reporting Unit Records Manager and Headquarters United States Air Force (HQ USAF) Designated OPR. As liaison between the originating office and AFFRLO, the OPR will: **(T-0)**.

2.3.1. Participate in the regulatory activities of the Department of the Air Force.

2.3.2. Prepare and submit to the AFFRLO, SAF/CNZA the description of rules under development by their organizations for AFFRLO and Office of Management and Budget review.

2.3.3. Send any published final rules affecting the public to the AFFRLO within 30 calendar days after printing or electronic distribution of the publication.

2.3.4. Send notices required in **paragraph 3.2.3.** to AFFRLO.

2.3.5. Review, approve, and send requests, with justification, for printed copies of the FR and CFR (complete sets only) to the AFFRLO if electronic access (<https://www.federalregister.gov/>) is unavailable, or if paper/electronic media is required.

Chapter 3

IMPACTS, IMPLICATIONS, HEARINGS, AND COMMITTEE MEETINGS

3.1. Rules with a Substantial and Direct Impact. When a rule has a substantial and direct impact on the general public, and therefore requires publication in the FR, the originating office shall: **(T-0)**.

3.1.1. Prepare the rule in compliance with Executive Order 12866, 5 USC § 601, et seq., and 44 USC § 3501, et seq., and notices with Title 5 USC § 551-559 and USC § 701-706 using the FR format in the National Archives and Records Administration Federal Register *Document Drafting Handbook* at <http://www.archives.gov/federal-register/write/handbook/>.

3.1.2. Coordinate the rule with the appropriate OPR (see [paragraph 2.3](#)) for compliance with this instruction.

3.1.3. Submit the rule to the AFFRLO using AF Form 1768, *Staff Summary Sheet*, or memorandum, requesting publication of the document in the FR. The originating office should coordinate the AF Form 1768 or memorandum through his/her functional counterpart at HQ USAF. The package is coordinated by SAF/GC, signed by an official, appointed by the President, and confirmed by a senate presidential appointment with senate confirmation, and shall contain the following information:

3.1.3.1. A certification as to whether the document is a major rule that has an annual economic effect of \$100 million or more, or certain other specified effects under Executive Order 12866.

3.1.3.2. A certification explaining an economic analysis is determined if a rule has significant economic impact on a substantial number of small entities as a regulatory flexibility analysis required by 5 USC § 601, et seq. A presidential appointment with senate confirmation must sign a 5 USC § 601, et seq. certification explaining that determination if such an analysis is not needed.

3.1.3.3. A supporting statement for a rule containing a collection of information that includes reporting and record keeping requirements under the provisions of 44 USC § 3501, et seq.

3.1.4. Send the proposed rules in editable format (e.g., Microsoft Word) to the AFFRLO that contain the following preamble information:

3.1.4.1. Agency. Identify the originating agency.

3.1.4.2. Action. Identify the type of document. Do not summarize the substance of a document (proposed rule, extension of comment period, notice of proposed rulemaking; final rule, confirmation of effective date, interim rule, adopted rule, etc.).

3.1.4.3. Summary. Explain briefly the “who, what, where, when, and why” of the document.

3.1.4.4. Dates. Include the dates essential to the document (e.g., effective date, comment deadlines, public hearings, and other dates) that would concern the public’s knowledge of rulemaking proceedings. A period of not less than 60 calendar days from the date the proposed rule is published in the FR is allowed for accepting comments.

3.1.4.5. Addresses. Include any address that the public needs to know (e.g., mailing or hand-delivering public comments, attending public hearings or meetings, and any material available for public inspection).

3.1.4.6. Contact. Include the name, address, telephone number, and e-mail of a person within the AF who can answer questions about the document.

3.1.4.7. Supplementary Information. Include the regulatory history of the rulemaking document. Provide background information and detail necessary to give adequate notice of the issues to be commented on as mandated by 5 USC § 551-559 and 5 USC § 701-706. If appropriate, state briefly why inviting public comment on a proposed rule is impractical, unnecessary, or contrary to the public interest.

3.1.4.8. Authority Citation. Cite the authority that authorizes the AF to change the CFR. Give the authority citation in the shortest form. There are two types of authority:

3.1.4.8.1. Statutory (Public Law or United States Code).

3.1.4.8.2. Non-statutory (Presidential Executive Order; Presidential Administrative Order; Presidential Memorandum; Agency delegation, policy, or directive; Office of Management and Budget circular, or CFR).

3.1.5. If the rule is a major rule under the requirements of Executive Order 12866, so state and include details. If it is not a major rule, include a statement, e.g., “The Department of the Air Force has determined that this proposed rule is not a major rule because it does not have an annual effect on the economy of \$100 million or more,” or other rationale that applies.

3.1.6. If 5 USC § 601, et seq., applies, so state, accomplish a regulatory analysis, and provide details of that analysis. If such an analysis is not required or is exempt, submit a 5 USC § 601, et seq. certification explaining this determination. This certification must be signed by an official appointed by the President and confirmed by a presidential appointee with senate confirmation.

3.1.7. If the provisions of 44 USC § 3501, et seq., apply, so state and provide details. If an analysis is not required or is exempt, include a statement, e.g., “This rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980, amended in 1995 (44 USC § 3501, et seq.)”.

3.1.8. Review the comments received from the public on a proposed rule and decide what changes, if any, should be made and obtain proper coordination.

3.1.9. Send the final rule to the AFFRLO within 120 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.

3.1.10. Notify the AFFRLO if a rule previously printed in the FR becomes obsolete, requires revision, or when another office assumes responsibility from the originating office.

3.1.10.1. Use amendatory language to identify changes to the rule in the CFR. The only acceptable terms used in an amendment are “add, amend, correct, nomenclature change, redesignate, remove, republish, reserve, revise, stay, suspend, and withdraw.”

3.1.10.2. Ensure amendments to proposed and final rules are published in the FR to change the CFR or to address public comments.

3.2. Rules with Federalism Impacts. As per Executive Order 13132, *Federalism*, “Policies that have federalism implications” refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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. When a rule is determined to have any Federalism implications, as defined above, and prior to formal publication of a rule, the originating office shall: **(T-0)**.

3.2.1. Afford adequate time for meaningful discussions and consideration of issues of concern expressed by state and local officials.

3.2.2. Document any such issues of concern and the extent to which they have been met.

3.2.3. Send the AFFRLO a notice for publication in the *Federal Register*. In a separately identified portion of the preamble to the rule, prepare a Federalism summary impact statement consisting of a written description of the:

3.2.3.1. Extent of prior consultation with state and local officials.

3.2.3.2. Extent to which the concerns of state and local officials have been met.

3.2.3.3. Air Force’s position supporting the need to issue the rule.

3.2.4. Provide to all participants a copy of the rule published in the Federal Register.

3.3. Notices of Hearings and Advisory Committee Meetings. See DoDI5104_AFI90-1401, *Department of Defense Federal Advisory Committee Management Program*, for specific requirements and procedures applicable to the Air Force Committee Management Program. The originating office shall: **(T-0)**.

3.3.1. Send the notice, in editable format (e.g., Microsoft Word), under the cover of a memorandum signed at least at the colonel-level, through the MAJCOM, Field Operating Agency, or Direct Reporting Unit designated OPR to the AFFRLO. Notice documents include the following items:

3.3.1.1. Headings. Agency Name (DoD)/Sub-agency Name (Department of the Air Force).

3.3.1.2. Subject Heading (Name of the meeting or intent of the notice).

3.3.1.3. Authority Citation. Cite the authority that authorizes the AF to issue the notice (see [paragraph 3.1.4.8](#)).

3.3.1.4. Text. The originating office should present the text of the notice in any organized and logical format; or use the same preamble format required for a rule or proposed rule omitting preamble captions that are not applicable (see [paragraph 3.1.4](#)).

3.3.2. Notify the AFFRLO of any change in the content or status of a notice (i.e., canceled, date changed) that would affect the public. Publish notices in the FR 15 calendar days prior to the date of the hearing/meeting. The originating office must submit the notice not later than 30 calendar days prior to the date of the hearing/meeting, to the AFFRLO, to allow the AFFRLO and Office of the Federal Register sufficient processing time.

3.3.2.1. If the notice does not meet the publication criteria of 15 calendar days prior, postpone the hearing/meeting or cancel until it can be properly noticed. A notice is not submitted for publication without advance approval from OSD and AF Committee Management Offices, and coordination with SAF/GC.

3.3.2.2. Publication of notices for hearings/meetings closed to the public need to be coordinated with SAF/GC prior to submitting the notice to the AFFRLO.

WILLIAM E. MARION II, SES, DAF
Deputy Chief Information Officer

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Administrative Procedure Act (5 USC § 551-559 and § 701-706)

AFI 33-332, *Air Force Privacy and Civil Liberties Program*, 12 January 2015

AFI 33-360, *Publications and Forms Management*, 1 December 2015

AFMAN 33-363, *Management of Records*, 1 March 2008

AFPD 33-3, *Information Management*, 8 September 2011

Congressional Review Act (5 USC § 801)

DoDI 5105.04, *Department of Defense Federal Advisory Committee Management Program*, 6 August 2007

DoDI 5105.18_AFI90-1402, *Intergovernmental and Intragovernmental Committee Management Program*, 20 March 2011

Executive Order 12866, *Regulatory Planning and Review*, 30 September 1993.

Executive Order 13132, *Federalism*, 4 August 1999

National Archives and Records Administration, Office of the Federal Register, *Document Drafting Handbook*.

Negotiated Rulemaking Act (5 USC § 561 - § 570, et seq.)

Administrative Instruction 102, *Office of the Secretary of Defense (OSD) Federal Register (FR) System*, 6 November 2006 Paperwork Reduction Act (44 USC § 3501, et seq.)

Regulatory Flexibility Act (5 USC § 601, et seq.)

Prescribed Forms

None

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

AF Form 1768, *Staff Summary Sheet*

Abbreviations and Acronyms

AF—Air Force

AFFRLO—Air Force Federal Register Liaison Officer

AFI—Air Force Instruction

AFMAN—Air Force Manual

AFPD—Air Force Policy Directive
CFR—Code of Federal Regulations
DoD—Department of Defense
DoDI—Department of Defense Initiative
FR—Federal Register
HQ USAF—Headquarters United States Air Force
MAJCOM—Major Command
OPR—Office of Primary Responsibility
OSD—Office of the Secretary of Defense
SAF—Secretary of the Air Force
USC—United States Code

Terms

Advisory Committee—Any committee, board, commission, council, conference, panel, task force, or other similar group, or their subcommittees that the AF forms or uses that has any members who are not full-time officers or employees of the government, established by statute. The committee is also established or utilized by the President or an agency official (see DoDI 5105.04).

Amendatory Language—Specific terms must be used to identify a change to the rule in the CFR. The only acceptable terms used in an amendment are “add, amend, correct, nomenclature change, redesignate, remove, republish, reserve, revise, stay, suspend, and withdraw.”

Amendments—Amendments to proposed and final rules are published in the FR to change the CFR or to address public comments. The CFR is the foundation of the *Federal Register* publication system.

Code of Federal Regulations—The CFR is an annual codification of the rules of each Federal agency. It is divided into 50 titles representing broad subject areas of Federal agencies. Each title of the CFR is divided as follows:

(1) **Chapter and Subchapter**—The division of a title assigned to a Federal agency or one of its components. Chapters are identified by Roman numerals; e.g., I, II, III, etc. The subchapter is used to group related parts within the chapter and is usually identified by a capital letter; e.g., A, B, C, etc.

(2) **Part and Subpart**.—The division of a chapter that consists of a unified body of rules applying to a single function of the issuing agency, or is devoted to a specific subject matter under the control of that agency. A part is identified by Arabic numerals through each title; e.g., 1, 2, 3, etc. A subpart is issued to group related sections within a part and identified by capital letters.

Directive Guidance—Guidance that Air Force Personnel are required to follow that are necessary to meet the requirements of law, safety, security, or other areas where common direction and standardization are needed.

Document—Specific categories are Rules, Proposed Rules, Notices, Meetings, Executive Orders, and Proclamations.

Federalism—The distribution of power in an organization (such as a government) between a central authority and the constituent units.

Federal Register (FR)—The daily FR contains four categories of documents: regulations (rules), proposed rules, notices, and Presidential documents. Rules published in the FR keep the CFR current. Proposed rules solicit public comment on an agency's rules and encourage public participation in the rulemaking process. Notices provide information of interest to the public but are not part of the regulatory process.

Code of Federal Regulations Publication System—The Federal Register system is composed of two major publications, the annual revised CFR and the daily FR. Together, the two publications provide a current version of each Federal agency's regulations.

Negotiated Rulemaking Procedures—A process of drafting regulations (rules) by bringing parties together that would be affected by the rule to include Government (as an advisory committee) to reach consensus (in all or part) before the rule is published.

Notice—A document that announces information of public interest. It will not contain regulatory text, impose requirements with general applicability and legal effect, or affect a rulemaking proceeding. Some notices are required to be published in compliance with legislation. Typical notice documents announce: meetings; availability of 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.

Preamble—Each agency document published in the proposed rules category of the FR must contain a preamble. The preamble follows the subject heading of the document. It explains the basis and purpose of the regulatory text. The preamble contains no regulatory text. It arranges basic information on the “who, what, where, when, and why” of a document for the reader's convenience. (See paragraph 3.1.4.3.).

Regulation—A document of general application designed to implement, interpret, or prescribe procedural requirements.

Regulatory Action—A decision making process that affects the general public.

Regulatory Plan—A Statement of Regulatory Priorities that identifies the most significant regulatory actions that the AF expects to issue in the next fiscal year in accordance with Executive Order 12866.

Rule—A regulatory document, such as an AFPD, AFI, AFMAN, that has general applicability to and legal effect on the public, that is published in the FR, and most of which is codified in the CFR.

(1) **Adopted Rule.**—An Interim Rule that has been published in the FR, that has been accepted as a final rule with change or a final rule without change.

(2) **Proposed Rule.**—A draft document, such as a proposed AFPD or AFI, published in the FR to allow calendar 60 days for public comments. A proposed rule is followed up with a final rule.

(3) Interim Final Rule.—A document that is published in the FR and CFR without prior notice of a proposed rule, usually to respond to an emergency situation or in response to a legislative or executive requirement. The interim rule may include requests for public comment, which may contain expiration dates for responses. An interim final rule is followed by a final rule.

(4) Direct Rule.—A rule that has not been preceded by a proposed rule. Used for routine and noncontroversial regulations that will not generate adverse comment. A direct final rule becomes effective on a specific future date, unless adverse comments are received within a specified period of time, generally before the effective date. If adverse comments are received, the rule is withdrawn. A confirmation document is optional, unless stated rule confirmed follow-up confirmation document.

(5) Final Rule.—A concluding document published in the FR and CFR that presents decision of the AF and addresses public comments.

(6) Significant Rule.—A proposed, interim final, or final rule may be a “significant rule” if it: (a) has an annual economic effect of \$100 million or more, or adversely affects 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; (b) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency; (c) materially alters the budgetary impact of entitlements, grants, user fees, or load programs or the rights and obligations of recipients thereof; or (d) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or principles of Executive Order 12866.

Unified Agenda of Federal Regulations—Consolidated Office of Management and Budget documents published in the FR consisting of published rules that have significant public impact and interest.