

§ 336.3

policy, or (iii) rules of agency organization, procedure, or practice.

(4) Any situation in which the DoD Component for good cause finds that inviting public comment on a proposed regulation is (i) impracticable, (ii) unnecessary, or (iii) contrary to the public interest, and incorporates in the adopted regulation that determination and its basis.

(e) Exceptions to the requirement in 5 U.S.C. 552 for publication in the FEDERAL REGISTER of adopted regulations for the guidance of the public shall be made in accordance with guidance provided in 32 CFR 286.8.

[40 FR 4911, Feb. 3, 1975. Redesignated at 41 FR 27074, July 1, 1976, and further redesignated and amended at 56 FR 64482, Dec. 10, 1991]

§ 336.3 Policy.

(a) It is the policy of the Department of Defense to encourage the maximum practicable participation of the public in the formulation of regulations having a substantial and direct impact on the public, and to inform the public fully through publication in the FEDERAL REGISTER of all adopted regulations intended for public guidance.

(b) A proposed regulation which would originate a Department of Defense policy having a substantial and direct impact on the public should be published, along with a notice of purpose and authority, in the FEDERAL REGISTER in order to invite public comment within a designated time at least 30 days prior to its intended adoption. This policy should be followed even though the proposed regulation may come within one or more of the exceptions or exemptions to the requirement for prepublication of proposed rules described in § 336.2(d) (2) (i) and (ii), (3) and (4), unless it is determined by the DoD Component as a matter within its sole and exclusive prerogative that the employment of the exception or exemption is appropriate to satisfy a significant and legitimate interest of the DoD Component or the public.

(c) After their adoption, all regulations for the guidance of the public shall be published in the FEDERAL REGISTER in accordance with 5 U.S.C. 552, even though they may come within one or more of the exemptions described in

32 CFR Ch. I (7–1–98 Edition)

32 CFR 286.6. If no significant and legitimate interest of the DoD Component or public precludes such publication. This policy extends to some adopted regulations for the guidance of the public which were not the subject of notice and public comment.

[40 FR 4911, Feb. 3, 1975. Redesignated at 41 FR 27074, July 1, 1976, and further redesignated and amended at 56 FR 64482, Dec. 10, 1991]

§ 336.4 Proposed regulations.

(a) The general notice of a proposed regulation shall be published in the FEDERAL REGISTER in accordance with the guidance contained in the "Federal Register Handbook on Document Drafting" (GSA), whenever that regulation would have a substantial and direct impact on the public or any significant portion of the public, unless it comes within one or more of the exceptions or exemptions previously set forth in § 336.2(d).

(b) The notice shall include:

(1) A statement of the purpose and objective of the proposed regulation;

(2) Reference to the legal authority under which the regulation is proposed; and

(3) The terms or substance of the proposed regulation.

(c) Whenever the originating DoD Component finds that notice and prepublication of a proposed regulation for public comment are impracticable, unnecessary, or contrary to the public interest, it shall incorporate that finding and a brief statement of its reasons in the adopted regulation, or it may adopt and publish in the FEDERAL REGISTER a separate regulation excepting or exempting categories of regulations for any of these reasons, with an explanation of the basis for excepting or exempting each particular category. Separate regulations for this purpose shall be promulgated by the procedures for proposed rules whenever this falls within the requirements of paragraph (a) of this section.

(d) Following the publication of notice and the proposed regulation in the FEDERAL REGISTER, the DoD Component shall give all interested persons an opportunity to participate in the rulemaking through the submission of written data, views, or arguments. An

opportunity for oral presentation will normally not be provided, but may as a matter within the sole and exclusive prerogative of the component be extended where it is found to be in the interest of the DoD Component or the public. After careful consideration of all relevant matter presented, the component shall incorporate in the adopted regulation a concise general statement of its basis and purpose. A preamble to the adopted regulation may be published in the FEDERAL REGISTER to explain the relationship of the adopted rule to the proposed rule, including the nature and effect of public comments.

[40 FR 4911, Feb. 3, 1975. Redesignated at 41 FR 27074, July 1, 1976, and further redesignated and amended at 56 FR 64482, Dec. 10, 1991]

§ 336.5 Publication in the Federal Register of adopted regulations and other matters.

Subject to the exemptions set forth in 32 CFR 286.6:

(a) Each DoD Component shall publish in the FEDERAL REGISTER an informative, current description for the guidance of the public, of where, how, and by what authority it performs any of its functions. In deciding which information to publish in the FEDERAL REGISTER a DoD Component shall consider the fundamental objective of informing all interested persons of how to deal effectively with the component.

(b) Information to be published in the FEDERAL REGISTER shall include:

(1) Descriptions of the central and field organization of the component concerned, and the established places at which, the employees or members of the armed forces from whom, and the methods whereby the public may secure information, make submittals or requests, or obtain decisions.

(2) The procedures by which a DoD Component conducts its business with the public, both formally and informally.

(3) The rules of procedure which must be followed, the description of forms which must be completed, or the source from which forms may be obtained, and instructions on the scope and content of papers, reports, examinations required to be submitted pursuant to

such rules of procedures, as adopted by the component.

(4) Directives, instructions, regulations, manuals, policy memorandums, statements of general policy, or interpretation of general applicability adopted by the agency, and other substantive rules of general applicability affecting the public.

(c) With the approval of the Director of the FEDERAL REGISTER, the requirement for publication in the FEDERAL REGISTER (1 CFR part 51, 37 FR 23614, Nov. 4, 1972) may be satisfied by reference in the FEDERAL REGISTER to other publications reasonably available to the class of persons affected and containing the information which must otherwise be published in the FEDERAL REGISTER.

(1) In order to be eligible for incorporation by reference, the matter must be in the nature of published data, criteria, standards, specifications, techniques, illustrations, or other published information reasonably available to members of class affected thereby.

(2) Incorporation by reference is not acceptable as a complete substitute for promulgating in full text material required to be published by 5 U.S.C. 552.

(3) Incorporation by reference is acceptable as a means of avoiding unnecessary repetition within the promulgated document of published information already reasonably available to the class affected. Examples include:

(i) Construction standards promulgated by a professional association or architects, engineers, or builders.

(ii) Code of ethics promulgated by professional organizations.

(iii) Forms and formats publicly or privately published and readily available to the persons required to use them.

(d) It is incumbent upon each component to review all information of the type described in paragraph (b) of this section, to insure that it is published on an up-to-date basis in the FEDERAL REGISTER, including every amendment, revision, or repeal. No member of the general public can be required to resort to, or be adversely affected by, any material not published as required by the foregoing provisions of § 336.5 unless he