4.1 What is the purpose of this chapter? This chapter describes the procedures that program offices should follow once they have finished writing a rulemaking document.

4.2 What are the steps a program office should follow when the office is finished writing a rulemaking document?

A. Federal Docket Management System (FDMS). Build a docket in FDMS for the rulemaking. See 202 FW 5 for more information.

B. Content of the rulemaking surname package. Prepare a rulemaking surname package that includes:

(1) The rule or proposed rule.

(2) Other pertinent documents. For example, for a proposed rule that carries out new statutory authority, include a copy of the authorizing legislation. For a final rule, include a copy of the published proposed rule.

(3) A note to reviewers that briefly explains the purpose of the rulemaking action and any deadlines (e.g., court imposed) for publication.

(4) For final rules, three copies of the Submission of Federal Rules Under the Congressional Review Act form (see section 4.3D).

C. The surname process. When the package is complete, start it through the surname process.

(1) You must get whatever clearances are necessary within your program area. Required clearances vary by program area. The Division of Policy and Directives Management (PDM) does not determine the clearance process for rulemaking documents within program areas.

(2) Once you get the necessary surnames within your program area, you must route the package to any other program areas that should see it. For example, you should allow the Office of Law Enforcement to review any rulemaking actions with law enforcement implications.

(3) After the surname package has cleared all the affected divisions and offices in the Service, bring it to PDM for clearance:

(a) Bring the package to the PDM lobby,

(b) Log it into the notebook provided,

(c) Complete a cover sheet (a stack is always available) and attach it to the package, and

(d) Leave the package in the in-box in the lobby.

(4) PDM will review the document for compliance with the statutes and Executive Orders that govern the rulemaking process, adherence to the style requirements of the OFR, consistency with other Service documents, internal consistency, and plain language.

(5) PDM notifies the originating program office when the package is ready for pickup in the PDM lobby. You make any required changes and submit the package with the revised draft to your Assistant Director's (AD) office.

(6) Following clearance from your AD, you must clear it with the Solicitor's Office and the Director's Office.

(7) After receiving all the surnames described above, send the package to the office of the Assistant Secretary for Fish and Wildlife and Parks for signature unless it is a document that pertains to adding, removing, or reclassifying species on the Lists of Threatened and Endangered Wildlife and Plants in 50 CFR 17. The Director may sign these documents.

D. Final rulemaking actions. In accordance with the Congressional Review Act (5 U.S.C. 801 et seq.), you must submit copies of final rulemaking actions at the time of publication to the Government Accountability Office (GAO) and both houses of Congress. To meet these requirements for final rules, interim rules, direct final rules, and emergency rules, you:

(1) Complete the form for Submission of Federal Rules Under the Congressional Review Act (CRA) (FWS Form 3–2393), available on our Forms Web site.

(2) Make three copies of the CRA Form, FWS Form 3–2393—one addressed to GAO, one addressed to the Speaker of the House of Representatives, and one addressed to the President of the Senate (see section 4.3D below for more information).

(3) Someone in your program office with signature authority (e.g., a division chief) should sign the forms.

4.3 What does the program office do with the rulemaking document after the appropriate official signs it? You must get post-signature clearance of your document from the Department. Submit a copy of the signed rulemaking document—not the original and not the entire rulemaking package—to the Office of the Executive Secretariat (OES). You should make sure that the Solicitor's surname is somewhere on the copy and also include a note to reviewers. OES will send the document to the Secretary's Chief of Staff for clearance. When the Chief of Staff has cleared the document, further clearance may be necessary as described below.

A. Nonsignificant rules: You may submit rulemaking documents that the Office of Management and Budget (OMB) designates as nonsignificant to OFR for publication following clearance in the Chief of Staff's Office. To submit your document to OFR for publication, follow the instructions in section 4.5.

B. Rules designated for informal review:

(1) For documents that OMB has designated for informal review (see 202 FW 1 and 2), e-mail a copy of the document to the PDM contacts listed on our Web site. PDM will forward your rule to our OMB desk officer.

(2) OMB generally responds to the Service within 10 days of receiving a document for informal review. OMB may provide input on the rule to PDM or directly to the program office. Copy PDM on all subsequent correspondence with OMB during the review period.

(3) Do not send a document designated for OMB's informal review to OFR for publication until you have heard back from PDM that OMB has approved the document. If OMB makes changes to the document, PDM will send the revised version to OES for approval by Departmental officials.

C. Significant rules: OMB has 90 days to review rulemaking documents designated as significant. To submit a rulemaking document to OMB for formal review:

(1) Send an electronic copy via e-mail to the PDM contacts listed on our Web site. PDM uploads the document to a database that OMB can access.

(2) After OMB's review is complete, PDM will notify you. When OMB clears your document, if there are no changes, you may send it to OFR for publication. To send your document to OFR for publication, follow the instructions in section 4.5.

(3) If OMB makes changes to the document, PDM will send the revised version to OES for approval by Departmental officials.

D. Final rules, interim rules, direct final rules, and emergency rules:

(1) As described above in section 4.2D, you must submit copies of final rulemaking actions to GAO and both houses of Congress at the time of publication.

(2) Make copies of the three signed CRA forms (FWS Form 3–2393).

(3) When you deliver the original signed CRA forms and copies of the rule to the House and the Senate, ask someone at each of those locations to sign the copy of the form. These signed copies are your proof that you delivered the rule to the House and the Senate in accordance with the CRA. Your electronic reply from GAO (for details on electronic submission to GAO, see section 4.4), or your fax confirmation, is your proof that you delivered the rule to GAO in accordance with the CRA. You should keep these documents with the administrative record for the rule.

4.4 How does the program office deliver the rule to the Senate, House, and GAO?

A. Delivery to the Senate: To hand-deliver a copy of the rule and the original signed CRA form to the Vice President's Office in the Senate, you must be a Federal employee with a Federal Government picture ID. Visit PDM's Web site for delivery information and the current phone number. Make sure to get the photocopy of the CRA form signed for your administrative record.

B. Delivery to the House: To hand-deliver a copy of the rule and the original signed CRA form to the Speaker's Office of the House of Representatives, you must be a Federal employee with a Federal Government picture ID. Visit PDM's Web site for delivery information and the current phone number. Make sure to get the photocopy of the CRA form signed for your administrative record.

C. Delivery to GAO: Email the rule and the CRA form to GAO.

(1) Prepare an electronic copy of the CRA form. Indicate who signed the form by typing "signed by" and the person's name, title, and date of signature.

(2) Prepare a brief e-mail message explaining that you are transmitting the rule for review under the CRA. If the rule document is more than 10 pages long, include a note that this is a long rulemaking document. GAO has made this request so they can save the rule to a disk instead of printing it out.

(3) Send the e-mail message, a copy of the rule, the CRA form, and any economic analyses to our GAO General Counsel contact. Visit PDM's Web site for the current e-mail address.

(4) Archive your e-mail message, as well as the return message you receive from GAO, and print out copies. These files are your proof of delivery to GAO, and you should keep them as part of the rule's administrative record.

(5) Forward the e-mail confirmation of receipt from GAO to the PDM contacts listed on their Web site.

4.5 How do I submit my rulemaking document to OFR?

A. After your rulemaking document has been cleared for publication, put the following items in an envelope:

(1) Three original signed copies of your document or one original signed document and two certified copies. To certify copies, PDM ensures that copies of the original documents and any disks submitted for publication are true and accurate copies. A PDM employee then hand-writes and signs the following statement at the bottom of the signature page on each copy: “Certified to be a true copy of the original.” (It is also acceptable for the same person who writes the letter of disk verification to do this.)

(2) A 3.5" disk or CD–ROM with an electronic file of the document.

(3) A letter of disk verification (see Exhibit 1 for a template). This letter certifies that the disk file matches the three hard copies of the document. The person who signed your FR document can sign this letter. If your document needs to publish sooner than the normal 3-day turnaround generally offered by OFR, see Exhibit 2 for a model letter to request expedited publication. Be sure to tell PDM of the need to expedite the process, and reserve requests for expedited publication for emergency situations.

B. Send documents to OFR by courier or delivery service and not by regular U.S. mail. To get the correct address and phone number, visit PDM’s Contact Information Web site.

C. For information on submitting XML-coded documents to OFR, see 202 FW 3, Exhibits 1 and 2.

4.6 Can I do anything to lower my program’s FR publication costs? OFR offers a discount on publication costs for documents we submit with embedded coding that causes the document to print in the three-column format used in the daily Federal Register. To submit your document with this coding (called XML tagging), contact PDM. At this time, we only use this option if you do not have a quick deadline for publication. PDM will try to arrange coding of your document.

4.7 When will my document publish? In most cases, your document will publish within 3-5 days of delivery to OFR. Especially long or complicated documents (e.g., those with many graphics) are likely to take longer. A few days before publication, OFR notifies PDM via e-mail of the dates the document is scheduled to go on public display and the date of publication (these dates are normally consecutive). PDM notifies the programs of these dates. If you want to check on your scheduled date yourself, you may add an icon for the OFR notification e-mailbox to your computer desktop. Contact PDM to do this.

/sgd/ Daniel M. Ashe
DEPUTY DIRECTOR

Date: April 12, 2010