



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

SECNAVINST 5720.45C
OJAG (Code 13)
25 March 2009

SECNAV INSTRUCTION 5720.45C

From: Secretary of the Navy

Subj: PUBLICATION OF DEPARTMENT OF THE NAVY DIRECTIVES AND
OTHER DOCUMENTS IN THE FEDERAL REGISTER

Ref: (a) Chapter 15 of Title 44, United States Code (U.S.C.)
(b) Chapters I and II of Title 1, Code of Federal
Regulations
(c) Section 552 of Title 5, U.S.C.
(d) DoD Administrative Instruction No. 102 of 7 Nov 06
(e) DoD Instruction 5025.01 of 28 Oct 07
(f) SECNAV M-5210.1

1. Purpose. To prescribe the procedures and responsibilities for publishing Department of the Navy (DON) directives and documents that affect the public in the Federal Register pursuant to references (a) through (e).

2. Cancellation. SECNAVINST 5720.45B.

3. "Federal Register" Defined. The term "Federal Register" is used in this instruction to include the daily editions of the publication bearing that title, and the special editions which are published at less frequent intervals. Special editions include the codification of Federal documents entitled, "Code of Federal Regulations;" the annual compilation of Federal agency organizational structures and functions entitled, "United States Government Manual;" the "Weekly Compilation of Presidential Documents;" and the annual compilation entitled, "Public Papers of the Presidents of the United States."

4. Responsibilities

a. DON Activities. The head of each DON activity is responsible for ensuring:

(1) the prompt publication of directives and other documents under their cognizance that are required to be published in the Federal Register pursuant to reference (a); and

(2) the full and prompt consideration of petitions of interested persons for the issuance, revision, or cancellation of directives under their cognizance.

b. Legal Counsel. To ensure compliance with publication requirements, component heads shall ensure that the cognizant judge advocate or general counsel reviews all directives prior to promulgation. Guidance may be obtained from the Office of the Judge Advocate General (OJAG) Administrative Law Division (Code 13).

c. Judge Advocate General. The Judge Advocate General (JAG), through his or her designated subordinates, is designated as the DON agency representative in accordance with section 16.1 of reference (b). The JAG shall perform the duties set forth under sections 16.2 through 16.4 of reference (b) in fulfilling the following functions in relation to the Office of the Federal Register:

(1) perform the duties of liaison officer by representing the Department of the Navy in all matters relating to the submission of documents to the Office of the Federal Register; supervising the selection, review, codification, and editing of such documents; and overseeing departmental compliance with the publication requirements of the Office of the Federal Register; and

(2) perform the duties of certifying officer by authenticating documents submitted to the Office of the Federal Register.

d. Responsibility for Joint Directives. In the case of an intra-Navy joint directive that is required to be published in the Federal Register, the responsibilities under subparagraph 4a(1) of this instruction shall be determined by agreement between the components having cognizance over the directive. The submission of a joint Armed Forces directive for publication in the Federal Register is the responsibility of the appropriate component of the Military Department having primary administrative cognizance for the directive.

5. Publication of Adopted Regulatory Documents for the Guidance of the Public

a. Discussion. In general, subsection (a)(1) of reference (c) requires that an informative, current description of where, how, and by what authority the Department of the Navy performs its functions and that substantive and procedural rules, policies, and interpretations affecting the public, be published in the Federal Register. Section 1505 of reference (a) provides additional guidance regarding documents to be published in the Federal Register.

(1) Statutory purposes. The general purposes of subsection (a)(1) of reference (c) are to provide useful information on Federal agency functions which concern the public; to fully apprise members of the public of their rights and opportunities in connection with agency functions; and to inform interested persons how to deal effectively with an agency.

(2) Legal effect. Pursuant to reference (c), unless actual and timely notice has been given, a person may not be required to resort to, or be adversely affected by, any matter that is required to be published in the Federal Register until it has been so published. The publication requirement operates to provide sufficient legal notice of the contents of such document to affected persons. Publication creates a legal presumption that such document was duly issued, prescribed, or promulgated. Courts may take judicial notice of the contents of documents published in the Federal Register.

b. Incorporation By Reference. Pursuant to references (b) and (c), and with the approval of the Director of the Federal Register, the requirement for publication in the Federal Register may be satisfied by reference to other documents containing the information that have been published in the Federal Register. In general, matters eligible for incorporation by reference are restricted to materials in the nature of published data, criteria, standards, specifications, techniques, illustrations, or other published information that is reasonably available to members of the class affected.

c. Manner of Publication. Documents published for public guidance under this paragraph shall be prepared and submitted for publication in the Federal Register in the manner prescribed in paragraph 6 of this instruction.

6. Procedures for Publishing in the Federal Register

a. General Requirements. The official having primary responsibility under paragraph 4 of this instruction for ensuring the publication of a document in the Federal Register shall deliver to OJAG (Code 13) by letter or electronic medium the following:

(1) an unsigned original and a copy of the document prepared in the form prescribed by reference (b);

(2) a cover letter requesting publication of the document in the Federal Register; and

(3) a computer diskette or other electronic medium containing the electronic version of the document.

b. Processing Times. In transmitting documents for publication in the Federal Register, allowances should be made for:

(1) delays of several days while documents are en route to OJAG (Code 13) and to the Office of the Federal Register;

(2) five working days processing time in OJAG (Code 13). A document that is required to be published in the Federal Register by a specified date or time should be transmitted to OJAG (Code 13) at least three weeks prior to the required publication date. In the absence of specific Secretarial authorization, the JAG shall not request the Office of the Federal Register to publish any document that cannot be published by a particular date as required by law or regulation. In such cases, the originator will be notified promptly and advised on possible means of avoiding a violation of the applicable law or regulation; and

(3) four working days processing time in the Office of the Federal Register. See section 17.2 of reference (b).

c. Rulemaking and Submission of Comments

(1) Pursuant to reference (d) and the guidance promulgated by the Office of the Secretary of Defense, or designee, all DON rulemaking actions shall be coordinated with OJAG in its capacity as the DON Federal Register Liaison Officer.

(2) Federal Register notices for any rulemaking action requesting public comment will include a specific reference directing the public to the Federal E-Rulemaking portal at <http://www.regulations.gov> (Regulations.gov). Comments may be submitted electronically through <http://www.regulations.gov> for entry into the Federal Docket Management System. Comments may also be submitted by mail to the Federal Docket Management System. The public and the component responsible for any rulemaking action can view comments submitted at Regulations.gov.

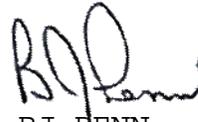
d. Component Representatives. Each DON activity having cognizance over the subject matter of documents published in the Federal Register shall designate a representative for the component to serve as a primary point-of-contact for OJAG (Code 13) in matters relating to the publication of documents in the Federal Register.

7. Verification of the Code of Federal Regulations. DON components having cognizance of directives that are codified in the Code of Federal Regulations shall periodically review and update the directives pursuant to reference (c). The JAG shall request the heads of the cognizant components to verify the Code of Federal Regulations for content and accuracy. To the extent possible, updates to the Code of Federal Regulations will be accomplished before the scheduled revision date each year.

8. Verification of the United States Government Manual. The JAG shall annually request components to verify the organizational and functional descriptions contained in the United States Government Manual. Updates to the United States Government Manual will be accomplished before the scheduled revision dates each year.

SECNAVINST 5720.45C
25 March 2009

9. Records Management. Records created as a result of this instruction, regardless of media and format, shall be managed in accordance with reference (f).



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Electronic only, via Department of the Navy Issuances Web site
<http://doni.daps.dla.mil>