

Federal Register 101

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The Office of the Federal Register, part of the National Archives and Records Administration, publishes regulations in the *Federal Register*, the official “newspaper” of the federal government, every work day. The office annually compiles all current regulations into the bound volumes of the Code of Federal Regulations (CFR).

How Was the *Federal Register* Established?

The idea for a centralized publication system for executive branch documents began during the Great Depression, when Congress began enacting a host of legislation that gave executive branch agencies increased authority to regulate. With this flood of new regulations, it soon became apparent that, because there was no standardized repository, it was difficult for the public and federal agencies to know which regulations were effective and enforceable.

This situation was dramatically highlighted when the Supreme Court decided a case involving an agency that tried to enforce a regulation that had actually been revoked by an executive order. No one—not the government, not the defendants, not the lower courts—was aware that the regulation had been eliminated.¹

In response, Congress enacted the Federal Register Act (FRA) in July of 1935. The FRA created the *Federal Register* as the official daily publication for presidential documents and executive agency rule and notice documents and established a central location for filing documents for public inspection.

The documents that the Federal Register Act requires agencies to publish in the *Federal Register* include:

- executive orders and proclamations;
- documents of general applicability and legal effect;



- documents that impose a penalty;
- any other documents that Congress requires.

The act also requires that these documents are made available for public inspection at least one day before they are published in the *Federal Register*. In 1937, Congress amended the FRA to create the Code of Federal Regulations, a codification (numerical arrangement) of all currently effective agency regulations.

The Federal Register Act created a partnership between the National Archives and Records Administration, the custodian of the documents, and the Government Printing Office (the printer) to promptly print and distribute the *Federal Register*. It also established the Administrative Committee of the Federal Register (ACFR), chaired by the archivist of the United States, to administer and regulate the *Federal Register* and the CFR. The other members of the committee are the public printer and a representative of the attorney general. The director of the *Federal Register* serves as secretary of the committee.

Publishing a document in the *Federal Register* provides the public official notice of a document’s existence, specifies the legal authority of the agency to issue the document, and gives the document evidentiary status. Each rulemaking document published in the *Federal Register* also shows how and when the CFR will be amended to include the new changes.

Within a decade of passing the FRA, Congress further refined the rulemaking process by enacting the Administrative Procedure Act, which established a uniform process for publishing, obtaining comments on, and finalizing regulations. This standard rulemaking process is known as “informal rulemaking.” The Ad-





Administrative Procedure Act requires that agencies in most cases issue a notice of proposed rulemaking (NPRM), provide an opportunity for public comments, issue a final rule with a concise statement of its basis and purpose, and make the final rule effective a minimum of 30 days after publication in the *Federal Register*.

What's in the *Federal Register*?

It is organized into four main sections, in the following order:

- presidential documents,
- rules,
- proposed rules,
- notices.

Presidential Documents

The presidential documents section contains documents the president must publish and documents the president decides to publish.

In the first category of mandatory publication are executive orders, which are the president's instructions to executive agencies on how to manage their operations. Executive orders are numbered consecutively and reprinted annually in Title 3 of the CFR.

Presidential proclamations are another category of documents that must be published in the *Federal Register*.

There are two types of proclamations, "ceremonial," which designate special observances, and "substantive," which usually relate to international trade, export controls, tariffs, or reservation of federal lands.

Examples of presidential documents that may but do not have to be published are administrative orders, presidential memos, and other miscellaneous documents.

Rules and Regulations

This section contains documents with final legal effect and general applicability to the public that amend the CFR and will be codified in the annual revision. This includes final rules, temporary rules, interim final rules, and direct final rules, as well as documents that relate to previously published rules, such as corrections and changes in effective dates.

Proposed Rules

This third section contains documents that announce possible changes to the CFR and solicit public comment on the proposal, such as notices of proposed rulemaking (NPRM) and preliminary rulemaking documents, including advance notices of proposed rulemaking and petitions for rulemaking. Other miscellaneous proposals and updates, including documents containing information on public meetings related to an NPRM, are also published in this section.

Since the early 1970s, the ACFR has required agencies to use a standardized format to provide greater uniformity and transparency for documents published in the final rules and the proposed rules sections of the *Federal Register*. Broadly speaking, the documents contain a preamble section, which arranges basic information on the "who, what, where, when, and why" of a document for the reader's convenience.

In rule documents, the preamble section is followed by the regulatory text. The regulations require that agencies use headings in a particular order in the preamble section of their documents. The headings identify particular sections of the preamble as follows:

- agency
- action (final rule, proposed rule)
- summary
- dates (effective date of the rule, or comment date for an NPRM)
- addresses
- for further information
- supplementary information.

The supplementary information section of the preamble contains background information and explains the basis and purpose of the rulemaking. Agencies also use the supplementary information section to provide additional information that is required by law, agency policy, or executive order.

Notices Section

The final section contains documents describing official actions and functions of an agency that affect the public or provide important information, but do not amend the CFR. They do not impose requirements with general applicability and legal effect, and do not affect a rulemaking proceeding.

Some notices are required to be published by law, for example advisory committee meeting notices, notices of the availability of environmental impact statements, and certain orders or decisions affecting named parties.

What's in the Code of Federal Regulations?

As mentioned above, the Office of the Federal Register also publishes the Code of Federal Regulations. The CFR contains agency rules that first appeared in the *Federal Register*.

On the effective date of rule, Office of the Federal Register editors incorporate the amendments from the rule into the CFR. Codifying the rules does not change their meaning or legal effect, it simply creates an organizational structure for the rules and allows readers to see the complete text of an effective rule without having to refer back to various issues of the *Federal Register*.

What's New in the World of Regulations Publication?

In the mid-1990s, the *Federal Register* and the CFR entered the digital age when all Office of the Federal Register publications went online. And in the spring of 2008, we launched a new website, www.federalregister.gov, where you can find links to the *Federal Register* and CFR in either text form or as a pdf that looks identical to the corresponding print edition. From this site, you can also link to the electronic CFR (e-CFR), a current version of the full CFR that is updated daily and includes recently published rules.²

Finally, as part of the launch of the new website, the Office of the Federal Register's public inspection file is now available online. In the past, viewing a document on public inspection meant coming to our office in Washington, D.C. Now, no matter where you are in the world, you can access the *Federal Register* website to see what documents will be published in the next day's issue.

The CFR is published in a set of about 220 soft-bound volumes or is available online at www.federalregister.gov.

An example of the codification structure is as follows:

- Title: 46: Broad subject area of regulations (Shipping)
- Chapter: I: Rules of individual agency (Coast Guard)
- Part: 10: Rules on a single program or function (Merchant Mariner Credential)
- Section: 10.203: One provision of program/function rules (Requirement to hold a TWIC and a merchant mariner credential)
- Paragraph: 10.203(a): Detailed, specific requirements

For more than 70 years, the *Federal Register* publication system has provided the public with a reliable and centralized source for the regulations that affect many aspects of our daily lives. Together, the *Federal Register* and the CFR help reduce inconsistencies, conflicts, and gaps in regulations.

This system also promotes transparency in regulations by helping you find and research regulations on a particular subject quickly and easily, which means you don't have to maintain bulky files of

revisions, ensuring they provide you a complete copy of an effective regulation. Finally, automating the entire system and making both publications available on the Web gives you or any other interested user the ability to access this important information from any computer, anywhere in the world.

About the author:

Ms. Bunk is the director of legal affairs and policy for the Office of the Federal Register. Before taking this position, Amy worked in the U.S. Coast Guard's Office of Regulations and Administrative Law, Office of the Judge Advocate General. She received her JD cum laude from the Syracuse University College of Law.

Bibliography:

- 5 U.S.C.
- 44 U.S.C.
- Office of the Federal Register's Document Drafting Handbook

Endnotes:

- ¹ *Panama Refining Co. v. Ryan*, 293 U.S. 388, 55 S.Ct. 241, 1935.
- ² While the e-CFR is an accurate version of the CFR and is updated daily, it is not an official legal edition.

