

Calendar No. 149

116TH CONGRESS }
1st Session }

SENATE

{ REPORT
116-57

FEDERAL REGISTER MODERNIZATION ACT

REPORT

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 1654

TO AMEND TITLE 44, UNITED STATES CODE, TO MODERNIZE THE
FEDERAL REGISTER, AND FOR OTHER PURPOSES



JULY 15, 2019.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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WASHINGTON : 2019

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JULY 15, 2019.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

【To accompany H.R. 1654】

【Including cost estimate of the Congressional Budget Office】

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 1654) to amend title 44, United States Code, to modernize Federal Register, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

H.R. 1654, the Federal Register Modernization Act, provides technical edits and updates to the Federal Register publication process. The Act updates the statute governing the Federal Register to be applicable in the 21st century by replacing words like “printing,” “binding,” and “distribution,” with words like “publishing,” “website,” and “Internet.”

II. BACKGROUND AND THE NEED FOR LEGISLATION

The Federal Register is printed and distributed to Federal Government and congressional offices daily to provide information on

Federal Government agency rules, proposed rules, public notices and other Executive Branch actions.¹ Since June 8, 1994, the Federal Register has been available to the public online.² The online version of the Federal Register is updated daily and has navigational features that make it more user-friendly than a paper copy.³ In 2018, Congress enacted legislation that stopped unnecessary printing and distribution of hard copies of the Federal Register to Federal Government and congressional offices.⁴ However, this law did not comprehensively halt automatic publication and distribution of Federal Registers throughout Federal regulations.

H.R. 1654 provides the technical edits and comprehensive updates to Chapter 15 to reflect the shift from a printed Federal Register to an electronically-published and updated Federal Register. H.R. 1654 replaces language like “printing, reprinting, wrapping, binding, and distributing” with “publishing.” H.R. 1654 also cuts wasteful printing by updating submission practices to no longer require two copies of a document in addition to the original document for inclusion in the Federal Register.

III. LEGISLATIVE HISTORY

Representative Mark Meadows (R-NC-11) introduced H.R. 1654, the Federal Register Modernization Act, on March 8, 2019. The Act was approved by the Committee on Oversight and Reform, and the House of Representatives passed H.R. 1674 on March 12, 2019.

The Committee considered H.R. 1654 at a business meeting on May 15, 2019. The Act was reported favorably *en bloc* by voice vote with Senators Johnson, Paul, Lankford, Scott, Peters, Carper, Hassan, and Rosen present. For the record only, Senators Portman, Romney, Hawley, and Sinema later asked to be recorded as a “yes” by unanimous consent.

IV. SECTION-BY-SECTION ANALYSIS OF THE ACT, AS REPORTED

Section 1. Short title

This section establishes the Act’s short title as the “Federal Register Modernization Act.”

Section 2. Federal Register modernization

This section substitutes references to the terms “printing”, “printing and distribution”, and “printed and bound in permanent form” with the term “publishing” in Chapter 15 of title 44 U.S. Code. It also replaces the term “comments” with “news commentary.”

This section also eliminates the requirement for filing a document with the Office of the Federal Register that two duplicate copies must be provided. It also authorizes the Administrative Committee of the Federal Register to regulate the manner in which

¹ Off. of the Fed. Register, *A Brief History Commemorating the 70th Anniversary of the Publication of the First Issue of the Federal Register March 14, 1936*, National Archives and Records Administration, 2, available at <https://www.archives.gov/files/federal-register/the-federal-register/history.pdf>.

² *Id.*

³ Off. of the Fed. Register, *About This Site*, <https://www.federalregister.gov/reader-aids/government-policy-and-ofr-procedures/about-this-site> (last visited May 21, 2019).

⁴ Fourth Continuing Appropriations for Fiscal Year 2018, Federal Register Printing Savings, Healthy Kids, Health-Related Taxes, and Budgetary Effects, Pub. L. No. 115-120, Div. A, 2, 132 Stat. 28, 28-29 (2018).

the Federal Register receives information and comments from the public and to issue special editions of the Federal Register.

Section 3. Determination of budgetary effects

To comply with the Statutory Pay-As-You-Go Act of 2010, this section states that the budgetary effects of the Act shall be determined by the latest statement from the “Budgetary Effects of PAYGO Legislation.”

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this Act and determined that the Act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 10, 2019.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1654, the Federal Register Modernization Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 1654, Federal Register Modernization Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on May 15, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	n.e.
Pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

n.e. = not estimated; * = between -\$500,000 and zero.

Under the Federal Register Act, the Office of the Federal Register (OFR) within the National Archives and Records Administration (NARA) produces the *Federal Register*. That publication compiles and organizes thousands of rules, regulations, executive orders, presidential documents, and notices generated by federal departments and agencies. Currently, the *Federal Register* is updated daily and is printed and published Monday through Friday, except for federal holidays. The OFR, working with the Government Publishing Office (GPO), has made the *Federal Register* available online since 1994. In addition, the OFR produces the *Code of Federal Regulations* (CFR), which contains all agency rules that first appeared in the *Federal Register*.

Under H.R. 1654, OFR would no longer be required to print the *Federal Register* or the CFR, but would be required to continue making it available online. CBO expects that under H.R. 1654 fewer copies of the *Federal Register* and CFR would be printed; however, we estimate that any decreased costs over the next five years would be insignificant because most of the costs associated with the submission of those documents involve their preparation, not their duplication.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman:

UNITED STATES CODE

* * * * *

TITLE 44—PUBLIC PRINTING AND DOCUMENTS

* * * * *

CHAPTER 15—FEDERAL REGISTER AND CODE OF FEDERAL REGULATIONS

Sec.

1501. Definitions.

1502. Custody and [printing] *publishing* of Federal documents; appointment of Director.

1503. Filing documents with Office; notation of time, public inspection; transmission for [printing] *publishing*.

1504. “Federal Register”; [printing] *publishing*; contents; distribution; price.

* * * * *

SEC. 1501. DEFINITIONS

As used in this chapter, unless the context otherwise requires—

“document” means a Presidential proclamation or Executive order and an order, regulation, rule, certificate, code of fair competition, license, notice, or similar instrument, issued, prescribed, or promulgated by a Federal agency;

“Federal agency” or “agency” means the President of the United States, or an executive department, independent board, establishment, bureau, agency, institution, commission, or separate office of the administrative branch of the Government of the United States but not the legislative or judicial branches of the Government;

“person” means an individual, partnership, association, or corporation [; and];

“publish” means to circulate for sale or distribution to the public; and

“National Archives of the United States” has the same meaning as in section 2901 (11) of this title.

SEC. 1502. CUSTODY AND [PRINTING] PUBLISHING OF FEDERAL DOCUMENTS; APPOINTMENT OF DIRECTOR

The Archivist of the United States, acting through the Office of the Federal Register, is charged with the custody and, together with the Director of the Government Publishing Office, with the prompt and uniform [printing and distribution] *publishing* of the documents required or authorized to be published by section 1505 of this title. There shall be at the head of the Office a director, appointed by, and who shall act under the general direction of, the Archivist of the United States in carrying out this chapter and the regulations prescribed under it.

SEC. 1503. FILING DOCUMENTS WITH OFFICE; NOTATION OF TIME; PUBLIC INSPECTION; TRANSMISSION FOR PUBLISHING

The original [and two duplicate originals or certified copies of a] document required or authorized to be published by section 1505 [of this title] shall be filed with the Office of the Federal Register [, which shall be open for that purpose during all hours of the working days when the National Archives Building is open for official business] *for publication at times established by the Administrative Committee of the Federal Register by regulation*. The Archivist of the United States shall cause to be noted on the original [and duplicate originals or certified copies] of each document the day and hour of filing. [When the original is issued, prescribed, or promulgated outside the District of Columbia, and certified copies are filed before the filing of the original, the notation shall be of the day and hour of filing of the certified copies.] Upon filing, [at least one copy] *the document* shall be immediately available for public inspection in the Office. The original shall be retained by the National Archives and Records Administration and shall be available for inspection under regulations prescribed by the Archivist, unless such original is disposed of in accordance with disposal schedules submitted by the Administrative Committee [of the Federal Register] and authorized by the Archivist pursuant to regulations issued under chapter 33 [of this title]; however, originals of proclamations of the President and Executive orders shall be permanently retained by the Administration as part of the National Archives of the United States. The Office shall transmit [immediately] to the Government Publishing Office [for printing], as provided by this chapter, [one duplicate original or certified copy

of] each document required or authorized to be published by section 1505 [of this title]. Every Federal agency shall cause to be transmitted for filing the original [and the duplicate originals or certified copies] of all such documents issued, prescribed, or promulgated by the agency.

SEC. 1504. 'FEDERAL REGISTER'; PUBLISHING; CONTENTS; DISTRIBUTION; PRICE

Documents required or authorized to be published by section 1505 [of this title] shall be [printed and distributed] *published* immediately by the Government Publishing Office in a serial publication designated the "Federal Register." The Director of the Government Publishing Office shall make available the facilities of the Government Publishing Office for the prompt [printing and distribution] *publication* of the Federal Register in the manner and at the times required by this chapter and the regulations prescribed under it. The contents of the daily issues shall be indexed and shall comprise all documents, required or authorized to be published, filed with the Office of the Federal Register up to the time of the day immediately preceding the day of [distribution] *publication* fixed by regulations under this chapter. There shall be [printed] *published* with each document a copy of the notation, required to be made by section 1503 [of this title], of the day and hour when, upon filing with the Office, the document was made available for public inspection. Distribution shall be made [by delivery or by deposit at a post office] at a time in the morning of the day of distribution fixed by regulations prescribed under this chapter. The prices to be charged for the Federal Register may be fixed by the Administrative Committee of the Federal Register established by section 1506 [of this title] without reference to the restrictions placed upon and fixed for the sale of Government publications by sections 1705 and 1708 [of this title].

SEC. 1505. DOCUMENTS TO BE PUBLISHED IN FEDERAL REGISTER

(a) * * *

(b) DOCUMENTS AUTHORIZED TO BE PUBLISHED BY REGULATIONS; [Comments] *NEWS COMMENTARY AND NEWS ITEMS EXCLUDED*.—In addition to the foregoing there shall also be published in the Federal Register other documents or classes of documents authorized to be published by regulations prescribed under this chapter with the approval of the President, but [comments] *news commentary* or news items of any character may not be published in the Federal Register.

(c) *ALTERNATIVE PUBLICATION*.—*In a continuity of operations event in which the Government Publishing Office does not fulfill the publication requirements of this chapter, the Office of the Federal Register may establish a website to publish the Federal Register until such time that the Government Publishing Office resumes publication.*

[(c)] (d) SUSPENSION OF REQUIREMENTS FOR FILING OF DOCUMENTS; ALTERNATE SYSTEMS FOR PROMULGATING, FILING, OR PUBLISHING DOCUMENTS; PRESERVATION OF ORIGINALS.—In the event of an attack or threatened attack upon the continental United States and a determination by the President that as a result of an attack or threatened attack—

(1) publication of the Federal Register or filing of documents with the Office of the Federal Register is impracticable, or

(2) under existing conditions publication in the Federal Register would not serve to give appropriate notice to the public of the contents of documents, the President may, without regard to any other provision of law, suspend all or part of the requirements of law or regulation for filing with the Office or publication in the Federal Register of documents or classes of documents.

The suspensions shall remain in effect until revoked by the President, or by concurrent resolution of the Congress. The President shall establish alternate systems for promulgating, filing, or publishing documents or classes of documents affected by such suspensions, including requirements relating to their effectiveness or validity, that may be considered under the then existing circumstances practicable to provide public notice of the issuance and of the contents of the documents. The alternate systems may, without limitation, provide for the use of regional or specialized publications or depositories for documents, or of the press, the radio, *telecommunications*, *the Internet*, or similar mediums of general communication. Compliance with alternate systems of filing or publication shall have the same effect as filing with the Office or publication in the Federal Register under this chapter or other law or regulation. With respect to documents promulgated under alternate systems, each agency shall preserve the original [and two duplicate originals or two certified copies] *documents* for filing with the Office when the President determines that it is practicable.

SEC. 1506. ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER; ESTABLISHMENT AND COMPOSITION; POWERS AND DUTIES

(a) COMPOSITION; DUTIES.—The Administrative Committee of the Federal Register shall consist of the Archivist of the United States or Acting Archivist, who shall [be chairman] chair the committee, an officer of the Department of Justice designated by the Attorney General, and the Director of the Government Publishing Office or Acting Director of the Government Publishing Office. The Director of the Federal Register shall act as secretary of the committee. The committee shall prescribe, with the approval of the President, regulations for carrying out this chapter. The regulations shall provide, among other things—

[(1) the manner of certification of copies required to be certified under section 1503 of this title, which certification may be permitted to be based upon confirmed communications from outside the District of Columbia;

[(2) the documents which shall be authorized under section 1505(b) of this title to be published in the Federal Register;

[(3) the manner and form in which the Federal Register shall be printed, reprinted, and compiled, indexed, bound, and distributed;

[(4) subject to subsection (b), the number of copies of the Federal Register, which shall be printed, reprinted, and compiled, the number which shall be distributed without charge to Members of Congress, officers and employees of the United States, or Federal agency, for official use, and the number which shall be available for distribution to the public; and

[(5) the prices to be charged for individual copies of, and subscriptions to, the Federal Register and reprints and bound volumes of it.]

(1) *the documents which shall be authorized under section 1505(b) to be published in the Federal Register;*

(2) *the manner and form in which the Federal Register shall be published;*

(3) *the manner and form in which agencies submit documents for publication in the Federal Register and special editions of the Federal Register;*

(4) *subject to subsection (b), the manner of distribution to Members of Congress, officers and employees of the United States, or Federal agency, for official use, and the number which shall be available for distribution to the public;*

(5) *the prices to be charged for individual copies of, and subscriptions to, the Federal Register and any reprints and bound volumes of it;*

(6) *the manner and form by which the Federal Register may receive information and comments from the public, if practicable and efficient; and*

(7) *special editions of the Federal Register.*

SEC. 1507. FILING DOCUMENT AS CONSTRUCTIVE NOTICE; PUBLICATION IN FEDERAL REGISTER AS PRESUMPTION OF VALIDITY; JUDICIAL NOTICE; CITATION

A document required by section 1505(a) of this title to be published in the Federal Register is not valid as against a person who has not had actual knowledge of it until [the duplicate originals or certified copies of the document have] *the document has* been filed with the Office of the Federal Register and a copy made available for public inspection as provided by section 1503 of this title. Unless otherwise specifically provided by statute, filing of a document, required or authorized to be published by section 1505 of this title, except in cases where notice by publication is insufficient in law, is sufficient to give notice of the contents of the document to a person subject to or affected by it. The publication in the Federal Register of a document creates a rebuttable presumption—

(1) that it was duly issued, prescribed, or promulgated;

(2) that it was filed with the Office of the Federal Register and made available for public inspection at the day and hour stated in the [printed] published notation;

(3) * * *

(4) * * *

SEC. 1508. * * *

SEC. 1509. COSTS OF PUBLICATION, ETC.

(a) The cost of [printing, reprinting, wrapping, binding, and distributing] *publishing* the Federal Register and the Code of Federal Regulations, and, except as provided in subsection (b), other expenses incurred by the Government Publishing Office in carrying out the duties placed upon it by this chapter shall be charged to the revolving fund provided in section 309. Reimbursements for such costs and expenses shall be made by the Federal agencies and credited, together with all receipts, as provided in section 309(b).

(b) The cost of [printing, reprinting, wrapping, binding, and distributing] *publishing* all other publications of the Federal Register

program, and other expenses incurred by the Government Publishing Office in connection with such publications, shall be borne by the appropriations to the Government Publishing Office and the appropriations are made available, and are authorized to be increased by additional sums necessary for the purposes, the increases to be based upon estimates submitted by the Director of the Government Publishing Office.

SEC. 1510. CODE OF FEDERAL REGULATIONS

(a) *SPECIAL EDITION FOR CODIFICATION OF AGENCY DOCUMENTS.*—The Administrative Committee of the Federal Register, with the approval of the President, may require, from time to time as it considers necessary, the preparation and publication in a special [or supplemental] edition[s] of the Federal Register [of] a complete codification[s] of the documents of each agency of the Government having general applicability and legal effect, issued or promulgated by the agency by publication in the Federal Register or by filing with the Administrative Committee, and *which* are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions, and are in effect as to facts arising on or after dates specified by the Administrative Committee.

(b) *CODE OF FEDERAL REGULATIONS.*—A codification published under subsection (a) of this section shall be [printed and bound in permanent form] *published* and shall be designated as the “Code of Federal Regulations”. The Administrative Committee shall regulate the [binding of the printed codifications into separate books with a view to practical usefulness and economical manufacture. Each book shall contain an explanation of its coverage and other aids to users that the Administrative Committee may require. A general index to the entire Code of Federal Regulations shall be separately printed and bound.] *manner and forms of publishing this codification.*

(c) *SUPPLEMENTATION, COLLATION, AND REPUBLICATION.*—The Administrative Committee shall regulate the supplementation and the collation and republication of the [printed] codification[s] with a view to keeping the Code of Federal Regulations as current as practicable. Each [book] *unit of codification* shall be [either] supplemented [or collated] and republished at least once each calendar year. *The Office of the Federal Register may create updates of each unit of codification from time to time and make the same available electronically or may provide public access using an electronic edition that allows a user to select a specific date and retrieve the version of the codification in effect as of that date.*

(d) *PREPARATION AND PUBLICATION BY THE FEDERAL REGISTER.*—The Office of the Federal Register shall prepare and publish the codifications, supplements, collations, [and indexes] *indices, and user aids* authorized by this section.

(e) *PRIMA FACIE EVIDENCE.*—The codified documents of the several agencies published in the [supplemental edition of the Federal Register] *Code of Federal Regulations* under this section, as amended by documents subsequently filed with the Office and published in the daily issues of the Federal Register shall be prima facie evidence of the text of the documents and of the fact that they are in effect on and after the date of publication.

(f) *REGULATIONS*.—The Administrative Committee [shall prescribe], with the approval of the President, *shall issue* regulations for carrying out this section.

(g) *EXCEPTION*.—This section does not require codification of the text of Presidential documents published and periodically compiled in supplements to Title 3 of the Code of Federal Regulations.

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