



Publication Procedures for Federal Register Documents During a Funding Hiatus

AGENCY: Office of the Federal Register.

ACTION: Notice of special procedures.

SUMMARY: In the event of an appropriations lapse, the Office of the Federal Register (OFR) would be required to publish documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property and documents related to funded programs if delaying publication until the end of the appropriations lapse would prevent or significantly damage the execution of funded functions at the agency. Since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents are authorized under the Act.

FOR FURTHER INFORMATION CONTACT: Katerina Horska, Director of Legal Affairs and Policy, or Miriam Vincent, Staff Attorney, Office of the *Federal Register*, National Archives and Records Administration, (202) 741-6030 or Fedreg.legal@nara.gov.

SUPPLEMENTARY INFORMATION:

Due to the possibility of a lapse in appropriations and in accordance with the provisions of the Antideficiency Act, as amended by Public Law No. 101-508, 104 Stat. 1388 (31 U.S.C. 1341), the OFR announces special procedures for agencies submitting documents for publication in the *Federal Register*.

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During a funding hiatus affecting one or more Federal agencies, the OFR will remain open to accept and process documents authorized to be published in the daily *Federal Register* in the absence of continuing appropriations. An agency wishing to submit a document to the OFR during a funding hiatus must attach a transmittal letter to the document which certifies that publication in the *Federal Register* is necessary:

Unfunded Agencies or Programs

- To safeguard human life, protect property, or
- Provide other emergency services consistent with the performance of functions and services exempted under the Antideficiency Act.

Funded Agencies or Programs

- Because delaying publication until the end of the appropriations lapse would prevent or significantly damage the execution of funded functions at the agency.

Under the August 16, 1995 opinion of the Office of Legal Counsel of the Department of Justice (OLC), *Government Operations in the Event of a Lapse in Appropriations*, exempt functions and services would include activities such as those related to the constitutional duties of the President, food and drug inspection, air traffic control, responses to natural or manmade disasters, law enforcement and supervision of financial markets. Documents related to normal or routine activities of Federal agencies, even if funded under prior year appropriations, will not be published.

In another opinion issued on December 13, 1995, *Effect of Appropriations for Other Agencies and Branches on the Authority to Continue Department of Justice Functions During the Lapse in the Department's Appropriations*, the OLC found that the necessary-implication exception allowed unfunded agencies to provide support to funded agencies or programs under certain conditions. Based on OLC interpretation of the December 12, 1995 opinion, as this applies to the OFR, if an agency with current appropriations submits a document for publication and certifies that delaying publication until the end of the appropriations lapse would prevent or significantly damage the execution of funded functions at the agency, then publication in the *Federal Register* will be a function or service excepted under the Anti-Deficiency Act.

At the onset of a funding hiatus, the OFR may suspend the regular three-day publication schedule to permit a limited number of exempt personnel to process emergency documents. Agency officials will be informed as to the schedule for filing and publishing individual documents.

OFR has posted frequently asked questions and transmittal letter templates on the following website, which will be updated as possible: <https://www.archives.gov/federal-register/the-federal-register/shutdown-faqs>.

Authority: The authority for this action is 44 U.S.C. 1502 and 1 CFR 2.4 and 5.1.

Oliver A. Potts,
Director of the Federal Register.

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