



## OFFICE OF THE FEDERAL REGISTER

Publication Procedures for Federal Register Documents During a Funding Hiatus

**AGENCY:** Office of the Federal Register.

**ACTION:** Notice of special procedures.

**SUMMARY:** During an appropriations lapse, the Office of the Federal Register (OFR) publishes 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 may publish 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. The OFR is prohibited by law from publishing any other agency documents, unless the document was received and scheduled for publication before the appropriations lapse began. The OFR does not make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act. It is the responsibility of the agency submitting a document for publication during an appropriations lapse to provide justification and certify that the document is authorized under the Antideficiency Act.

**FOR FURTHER INFORMATION CONTACT:** Liza Davis, Esq., Director of Legal Affairs and Policy, or Mariya Solomiy, Staff Attorney, Office of the Federal Register, National Archives and Records Administration, (202) 741-6030 or [Fedreg.legal@nara.gov](mailto: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, Public Law 97-258, as amended (31 U.S.C. 1341), the OFR announces special procedures for agencies transmitting documents for publication in the *Federal Register*.

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determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act. It is the responsibility of the agency submitting a document for publication to provide justification and certify that the document is authorized under the Antideficiency Act.

During an appropriations lapse affecting one or more Federal agencies, the OFR remains 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 transmit a document to the OFR during an appropriations lapse must attach an exception letter to the document which provides justification and certifies that publication in the *Federal Register* is necessary for one of the following reasons:

***Unfunded Agencies or Programs***

- To safeguard human life, protect property, or
- To 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.

The OFR may be able to accept documents transmitted for publication if delaying publication would 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 unless they were received and scheduled for publication before the funding lapse began.

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 13, 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* would be a function or service excepted under the Antideficiency Act.

At the onset of an appropriations lapse, the OFR may suspend the regular publication schedule to permit a limited number of exempt personnel to process excepted documents. Agency officials will be informed as to the schedule for filing and publishing individual documents.

OFR has posted frequently asked questions and excepted letter templates on the following website, which will be updated as necessary: [www.archives.gov/federal-register/agencies/shutdown-faqs](http://www.archives.gov/federal-register/agencies/shutdown-faqs).

**Authority:** 44 U.S.C. 1502; 1 CFR 2.4 and 5.1.

Oliver A. Potts,

Director of the Federal Register.

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