

# EXHIBIT 32

# FEDERAL REGISTER

THE NATIONAL ARCHIVES  
OF THE UNITED STATES  
1934

VOLUME I      NUMBER 1

*Washington, Saturday, March 14, 1936*

## PRESIDENT OF THE UNITED STATES

### EXECUTIVE ORDER

#### ENLARGING CAPE ROMAIN MIGRATORY BIRD REFUGE

##### SOUTH CAROLINA

By virtue of and pursuant to the authority vested in me as President of the United States, and in order to effectuate further the purpose of the Migratory Bird Conservation Act (45 Stat. 1222), it is ordered that the following land area, acquired by the United States in Charleston County, South Carolina, with all buildings thereon, be and is hereby reserved and set apart as a part of the Refuge of Agriculture, subject to valid existing rights, as an addition to the Cape Romain Migratory Bird Refuge, established under the said Migratory Bird Conservation Act:

Being all of what is known as Bull Island, lying on the southwest side of Bull Bay, between Price Creek and Bull Creek, and the Atlantic Ocean, and about three miles off the mainland of South Carolina, and about fourteen miles southwest of McClellanville, South Carolina. The following survey was executed under the direction of the Bureau of Biological Survey, Department of Agriculture, in June and July 1935. All bearings in this description were turned from the true meridian as determined by altitude observations on the sun during the progress of the survey, and all distances are expressed in chains.

Beginning at corner No. 1, a point at the edge of the marsh on the north side of Bull Island, on the west side of Jacks Creek which bears S. 40°30' E., at the junction of Jacks Creek with Bull Harbor; from this corner a U. S. B. S. standard concrete post marked "1 WC COR 1 BULLS ISLAND 1935", set 18 in. in the ground for a witness corner on a small grassy sand ridge, bears S. 16°57' E., 8.61 chs. distant; from which witness corner a 10 in. white oak blazed and scribed "BT WC COR 1" bears N. 56° W., 0.23 ch. distant; an 8 in. white oak blazed and scribed "BT WC COR 1" bears S. 3° E., 0.24 ch. distant;

Thence from said initial point, with the north side of Bull Island, along the edge of the marsh with the meanders thereof, in part with the south shore of Bull Harbor and in part with Bull Bay,

N. 51°28' E., 12.57 chs. to a point across Jacks Creek, at its mouth, on the edge of the salt marsh on Bull Bay; thence,  
N. 21°19' E., 4.45 chs.;  
N. 1°54' E., 8.45 chs.;  
S. 98°57' E., 16.60 chs.;  
S. 75°29' E., 15.66 chs.;  
N. 85°24' E., 15.88 chs. to a point at the edge of salt marsh and grass on Bull Bay;

Thence with mean high water along sandy beach and sand dunes,

N. 31°20' E., 17.18 chs.;  
N. 65°33' E., 3.81 chs. to the northeasterly point of Bull Island; thence,  
S. 97°37' E., 8.13 chs.

S. 21°28' E., 19.36 chs. to corner No. 2, a point on the northeasterly end of the measure of Bull Island, facing the Atlantic Ocean; from this corner a U. S. B. S. standard concrete post marked "2 WC COR 2 BULLS ISLAND 1935", set 18 in. in the ground for a witness corner on the west slope of a grassy sand dune about 200 chs. northeast of a dense growth of cedar, myrtle, and palmetto, bears S. 71°20' W., 0.53 ch. distant; from which witness corner a U. S. C. & G. S. concrete monument marked "BULL 1934" bears N. 67°48' W., 2.18 chs. distant; an 18 in. cedar blazed and scribed "BT WC COR 2" bears S. 13°00' W., 2.23 chs. distant; from which witness corner,

Thence with mean high water along the east shore of Bull Island, with the meanders thereof, between the beach and the marsh, and palmetto,

S. 22°54' E., 8.22 chs.;  
S. 1°01' E., 9.15 chs.;  
S. 15°31' W., 19.17 chs.;  
S. 14°50' W., 17.21 chs.;  
S. 16°07' W., 4.52 chs.;  
S. 18°28' W., 9.87 chs.;  
S. 19°11' W., 12.25 chs.;  
S. 16°45' W., 21.95 chs.;  
S. 13°01' W., 12.76 chs.;  
S. 23°21' W., 9.19 chs. to corner No. 3, a point at mean high

water at the northeast end of a strip of sand dunes lying between the beach and a heavy growth of palmetto, oak, and cedar, at the edge of beach and sand dunes; from this corner a U. S. B. S. standard concrete post marked "3 WC COR 3 BULLS ISLAND 1935", set 18 in. in the ground for a witness corner in grassy sand dunes and scattered palmetto, bears N. 75°21' W., 0.79 ch. distant; and palmetto were blazed for witness trees;

Thence, continuing with the southerly shore of Bull Island, with the meanders thereof, along mean high water,

S. 38°15' W., 13.40 chs.;  
S. 60°32' W., 12.58 chs.;  
S. 71°00' W., 13.65 chs.;  
S. 74°30' W., 14.39 chs.;  
S. 73°30' W., 14.75 chs. to a point at mean high water at the edge of beach and sand dunes; from this point a U. S. B. S. standard concrete post marked "3A WC MP 3-5 BULLS ISLAND 1935", set 18 in. in the ground for a witness corner in grassy sand dunes, bears N. 21° E., 0.77 ch. distant; thence,  
S. 75°22' W., 14.66 chs.;  
S. 73°12' W., 15.10 chs.;  
S. 73°32' W., 14.45 chs.;  
S. 72°21' W., 14.12 chs.;  
S. 71°55' W., 14.55 chs. to a point at mean high water at the

edge of beach and sand dunes; from this point the northeast corner of a bathhouse bears N. 76°45' W., 4.24 chs. distant; and a U. S. B. S. standard concrete post marked "4 WC MP 3-10 BULLS ISLAND 1935", set 18 in. in the ground for a witness corner in grassy sand dunes, bears N. 76°45' W., 4.59 chs. distant;

Thence with mean high water along the edge of beach and sand dunes,

S. 89°37' W., 18.15 chs.;  
S. 89°27' W., 17.28 chs.;  
S. 68°00' W., 15.23 chs.;  
S. 66°09' W., 15.47 chs.;  
S. 65°16' W., 15.95 chs. to a point at mean high water at the

edge of beach and sand dunes; from this point a U. S. B. S. standard concrete post marked "5A WC MP 3-15 BULLS ISLAND 1935", set 18 in. in the ground for a witness corner



First cover of the *Federal Register*, March 14, 1936.

# THE OFFICE OF THE FEDERAL REGISTER

*A Brief History Commemorating the 70th Anniversary  
of the Publication of the First Issue of the Federal Register*

MARCH 14, 1936



# The *Federal Register*

The *Federal Register* is the legacy of a “perfect storm” of events that peaked as a public policy concern in December 1934. In response to those events, the Federal Register Act was approved on July 26, 1935, and the first issue of the *Federal Register* was published on March 14, 1936. Throughout the remainder of the 20th Century, the Federal Register system expanded and evolved as the nation’s leaders gained experience using the system to conduct the business of government in times of peace and war.

On December 10, 1934, at the Supreme Court, the Assistant Attorney General of the United States had been grilled during oral arguments in the first case to reach the Court challenging the constitutionality of the centerpiece of President Roosevelt’s “New Deal” — the National Industrial Recovery Act (NIRA). The critical constitutional issues at stake were mostly ignored that day while the Justices focused on the fact that the defendants, two Texas oil companies, had been charged with violating a provision of regulations that technically did not exist at the time the companies were charged. The defects in the case highlighted a fundamental problem facing a democratic government that was exploding with new agencies and new regulations. Amidst the ferment of orders and codes issuing from agencies, even individuals working at the highest levels of government found it difficult or impossible to keep track of all of them. And for the regulated public, this new body of “executive legislation” was inaccessible and virtually hidden.

The next day, at the White House, where the great men of the New Deal had been arguing over the value of publishing a gazette containing the orders issued by Executive Branch officers, President Roosevelt laid aside his misgivings about possible misuse of the publication for propagandistic purposes and appointed a committee of the National Emergency Council to make a special study of the idea.

Meanwhile, behind-the-scenes maneuvering by lawmakers and influential legal minds, including Supreme Court Justice Louis Brandeis, culminated in the publication on December 11, 1934 of a *Harvard Law Review* article by Erwin Griswold entitled “Government in Ignorance of the Law – A Plea for Better Publication of Executive Legislation.” The arguments Griswold made for orderly publication of the official actions of the Executive Branch were underlined when the Supreme Court issued its opinion in



the Panama Oil case and forced the hand of the committee studying the issue for President Roosevelt.

Congress passed legislation to create the *Federal Register*, and the President signed it into law (Pub. L. 74-220, July 26, 1935).

The Act created a lasting partnership between the National Archives and the Government Printing Office. The Archivist of the United States, acting through a Division in the National Archives, was charged with custody of and, with the Public Printer, prompt and uniform printing and distribution of public documents in a publication designated the *Federal Register*. The documents were to include: Presidential proclamations and Executive orders; documents the President determined to have general applicability and legal effect; documents required to be published by Act of Congress; and documents authorized to be published by regulations.

Agencies were to compile and file a complete set of all their documents that were in force as of January 26, 1936, and they were to begin filing new documents by September 26, 1936. The Act provided for the immediate public inspection of all documents filed with the Division, established an Administrative Committee to issue relevant regulations, and stated that documents could not be valid against any person until filed at the Federal Register. The Division was to be headed by a Director appointed by the President and acting under the general direction of the Archivist.

# Setting Up Operations

In 1935 the National Archives was as new as the Division of the Federal Register that was placed within it. **The first Director of the Federal Register, retired Army Major Bernard R. Kennedy, was appointed by President Roosevelt, effective September 3, 1935. On November 8, 1935, he joined the first Archivist, Robert D.W. Connor, and the heads of the four other divisions of the newly formed National Archives in relocating from temporary quarters in the Justice Department building to occupy the newly opened National Archives Building.**

The Administrative Committee, comprised of the Archivist, the Public Printer, and a representative of the Attorney General, held its first meeting on September 27, 1935, and met regularly thereafter. Based upon their recommendations, the President issued the first regulations governing the process of filing documents on February 18, 1936, in Executive Order 7298.



**Major Bernard R. Kennedy, first Director of the Federal Register (1935-1959), and his small staff began startup activities immediately:**

***"It was necessary to establish contacts with the many agencies of the Government, to explain to them the requirements of the Act, and to request that the submission of compilations be undertaken immediately and that liaison officers be appointed for contact work with the Division."***

**[2nd Annual Report of the Archivist of the United States 1935-1936]**

In September 1935, even before regulations had been issued, the new staff sent letters to 123 different agencies to explain the requirements of the Federal Register Act. The Administrative Committee approved the format of daily issues of the *Federal Register*, its subscription price of \$10 per year, and rules governing *Federal Register* publication, all of which were issued as regulations signed by the President on March 2, 1936. Based on these procedures, the first documents for publication were filed with the Division on March 12, 1936, and the first issue of the *Federal Register* was published on March 14, 1936. It contained sixteen pages.

# The Code of Federal Regulations

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Today the Office of the Federal Register, in partnership with the Government Printing Office (GPO), publishes eleven separate series of government publications as a part of the Federal Register system. Seventy years ago the *Federal Register* was the sole publication required by the Federal Register Act. **But the need for supplementary publications became apparent during the first year of operations.** The *Federal Register Index* was the first such supplementary publication which the Division began to produce immediately as a reference guide to the material in the daily publication.

During its first year of operation, the Administrative Committee proposed amending the Federal Register Act to provide for a codification, rather than a mere compilation, of the vast amounts of materials being identified by agencies as regulatory material. The amendment, introduced by the sponsor of the original act, Representative Emanuel Celler (D-NY), became Public Law 75-158 when approved by the President on June 19, 1937. Each agency was to prepare and file with the Administrative Committee a complete codification of all documents having legal effect and in force on June 1, 1938. The codifications were due by July 1, 1938, and a re-codification was required every fifth year thereafter. The amendment established a Codification Board made up of Federal Register and Justice Department attorneys to set policy for the new codification.

As the Codification Board met and considered the needs of agencies and the public, it came to the conclusion that codification should be done on the basis of a common structure with common elements. At the recommendation of the Administrative Committee, on October 11, 1938, the President authorized a new publication: the *Code of Federal Regulations*. The new Code was made up of 50 titles, or subject areas, to be updated with annual supplements until 1943 when a general codification would again be required from all agencies, then and every five years thereafter.

In anticipation of the new codification system, the June 4, 1938 issue of the *Federal Register* for the first time grouped documents according to the titles in the Code, and the number of columns increased from two to three to accommodate printing in the Code. The needs and capabilities associated with

the printing processes of the *Federal Register* always have played a central role in the policies and procedures of the Federal Register system. At times those needs and capabilities have been the driving force for change. At other times, GPO has adjusted its processes to the needs created by the legal requirements of the Federal Register system. But the relationship between the Federal Register and GPO always has been a partnership, as envisioned by the Federal Register Act.

The Codification Board was abolished and its functions transferred to the Federal Register Division in 1939, the same year that the first volume of the first edition of the 15-volume series appeared. The first annual Supplement was published in 1940. Although the *Code of Federal Regulations* would change in significant ways during the next 65 years, the major components of the Federal Register system remain the Code, referred to as a special edition, and the *Federal Register*. In reality, the *Federal Register* is a daily edition of changes to the standing *Code of Federal Regulations*.

The Administrative Committee's proposal to create a codification of Federal regulations was the first of many alterations and enhancements to the Federal Register system that have demonstrated its flexibility and resilience. The system has been adapted to changing needs and circumstances, but its purpose remains essentially that envisioned in 1935 – a source for and record of the official actions of Executive Branch officers of the Federal Government.

# The Winds of War

After five years of editorial and publishing experience, the Federal Register Division confronted enormous changes wrought by the demands of a government gone to war following the attack on Pearl Harbor at the end of 1941. Some of the changes were temporary — the dramatic rise in the number of documents published, for example — while others left a permanent imprint on both the publication and the Division. The number of documents printed jumped from 7,850 in Fiscal Year (FY) 1941 to 18,569 in FY1943, then returned closer to pre-war levels by FY1947. The nature of the information in the documents reflected the nation at war: price schedules, preference orders, export control regulations, selective service regulations, rationing orders; documents on aliens and nationality, consumer credit, and the establishment of new war agencies. One class of documents was no longer published: summaries of contracts for manufacture of munitions and implements of war.

Considerable assistance not directly connected with the publication of the *Federal Register* began to be given to Government officials and business leaders unfamiliar with the Federal regulatory process. The Division aided officials of many war agencies in drafting and issuing rules and regulations guiding not only the public but also their own large and scattered staffs. Providing drafting assistance to agencies has remained a part of the work of the staff of the *Federal Register* since that time.

During the war some trade journals and other papers began a daily practice of telephoning to ask whether regulations on particular subjects had been filed for publication the next day. Others sent typists to copy the documents before they were printed in the *Federal Register*. These practices continue today in the Public Inspection area of the Office, although researchers now use copying machines, computer terminals, and digital cameras to do their work.

Because so many of the regulations in effect on June 1, 1943, when the Federal Register Act required a new codification of all documents, were of a temporary nature relating to war needs, Congress authorized the publication of a cumulative supplement that year instead of a completely new Code, and additional annual supplements were authorized for the duration of the war.

In 1944 David C. Eberhart, Jr., moved into the post of Chief Editor, a role as second in command to Major Kennedy that he was to play, with varying titles, until he succeeded the Director in 1959. When Eberhart retired in 1970, the Division of the Federal Register had been led by



only two men for the entire first thirty-five years of its existence, and their tenure had overlapped for fifteen of those years. At its 70th Anniversary the *Federal Register* has known three primary

generations of editors – those who set up the publication systems in the 1930s and 1940s; those who knew and learned from that first generation; and a generation trained by those once-removed from the first generation. During the past decade this latter generation has begun passing the torch to a new, fourth generation of staff.

# The Administrative Procedure Act

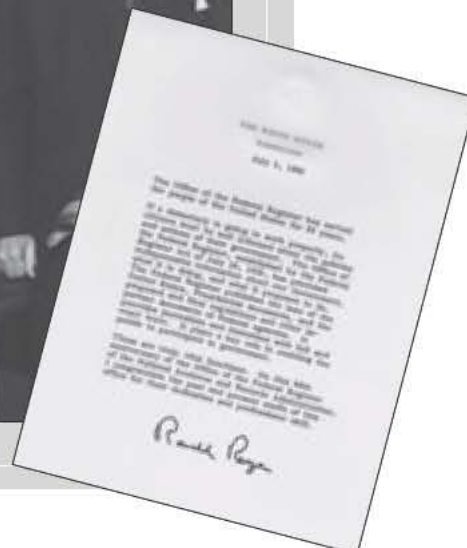
On June 11, 1946, only months after the 10th anniversary of the publication of the first issue of the *Federal Register*, by means of which the results of agency rulemaking were placed in the public domain, the Administrative Procedure Act (APA) (5 U.S.C. 552) was approved to place the rulemaking process itself in the public domain as well. The APA established a new process for informal (non-judicial) rulemaking: Agencies were required to publish notices of proposed rulemaking in the *Federal Register* and provide the opportunity for public comment before final rules could be put into effect. In addition, most agencies were required to publish statements of general policy, descriptions of organization, procedure, and delegations of final authority in the *Federal Register*.

The issue of January 1, 1947 was the first to have a Proposed Rule category. The requirement to publish organizational information resulted in publication of the largest single issue up to that date on September 11, 1946, containing 1,094 pages. The APA transformed the *Federal Register* from being merely a source of authoritative information about regulations to being an integral part of the democratic, quasi-legislative process by which those regulations were formed.

The Supreme Court's decision in *Federal Crop Insurance Corp. v. Merrill* (332 U.S. 380) on November 10, 1947, substantiated the importance of the process of publishing regulations in the daily *Federal Register*. The Court determined that the appearance of rules and regulations in the *Federal Register* gives legal notice of their content and they are accordingly binding regardless of actual knowledge of their content or of hardship resulting from innocent ignorance – approving the principle of constructive notice with regard to rules and regulations and placing them on a par with statutory law.

Fifty years after enactment of the Administrative Procedure Act, the National Archives and Records Administration and the American Bar Association commemorated the event on October 6, 1995, and singled out two of the Act's "founding fathers" Clark Byse (left) and Walter Gelhorn (right).

President Reagan took note of the 50th Anniversary of the Federal Register Act in 1985.



# Years of Change

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As the middle decade of the 20th Century neared, the nation seemed anxious to put away the last vestiges of its war footing. **A movement to modernize government, to make it more efficient, and to apply principles of business to government took hold.** The *Federal Register* and its companion publications felt the force of these movements in a variety of ways.

Upon recommendation of the Administrative Committee, President Truman on February 4, 1948, authorized, in Executive Order 9930, the first complete revision of the *Code of Federal Regulations*, to be issued in 1949. In working on the 1949 edition, the staff of the Division of the Federal Register had to cover a ten-year period, instead of the intended five-year period, and the new edition required changes in both scope and content. Editors added a table linking statutory law and related administrative regulations, tables that are still revised and maintained today. The new Code was to be updated by cumulative pocket supplements to each volume rather than by single annual supplements to the entire Code.

The efficiencies applied to the new Code reduced the total pages in it from the 39,000 in the original Code plus its Supplements to 22,000 in the new Code. The complete set of 45 total volumes was available by June 30, 1950.

On June 30, 1949 the Federal Property and Administrative Services Act (63 Stat. 381) was approved by the President and the functions of the Director of the Federal Register Division were transferred

to the Administrator of the new **General Services Administration** (GSA). The Archivist, now the head of the National Archives **and Records Service** (NARS) within GSA, retained the role of Chairman of the renamed “Administrative Committee **of the Federal Register**” and the Division of the Federal Register was retained within NARS.

## New Responsibilities

Since the founding of the American Republic the Department of State had served not only as the arm of the President in the conduct of foreign relations, but as the office handling his ministerial duties. On May 24, 1950, President Truman separated these duties in his Reorganization Plan No. 20, removing all activities not related to foreign affairs to other agencies in the Executive Branch. In this process, four new responsibilities were assigned to the General Services Administration and delegated to the Federal Register Division within it.

The *Statutes at Large* is the chronological compilation of all the public and private laws of the United States and Presidential proclamations. When transferred to the Federal Register Division, work on Volumes 63 and

64 from the 81st Congress (1949-50) was shared with the State Department which continued to edit the *Treaties and International Agreements* contained in the Statutes volumes. After that, those materials were published separately by the State Department in a new series. Volume 71 of the *Statutes at Large*, for the 1st Session of the 85th Congress, published in 1958, rounded out a series of improvements instituted by the Division to make the volumes more useable and available on a timely basis.

Publication of the *Statutes at Large* is preceded by the publication of pamphlet-sized editions of each law, called Slip Laws. The responsibility to receive the original documents approved by the President, or approved by Congress over the President’s veto, to assign public law numbers to them, and to publish them as Slip Laws, also was delegated to the Federal Register Division.

Another ministerial function transferred from the Department of State was the responsibility for the receipt and publication of amendments to the *Constitution of the United States* and the organization of the process surrounding ratification of amendments within the States. Shortly after taking on this responsibility, the Federal Register Division handled the certification and publication of the 22nd Amendment to the Constitution. Five more followed, most recently the 27th Amendment, certified on May 7, 1992, an amendment historically significant for being among the original twelve resolutions, ten of which became the first ten Constitutional Amendments known collectively as the “Bill of Rights.”

## Serving the Government in New Ways

A final responsibility delegated to the Federal Register Division with the President's reorganization plan was to carry out the ministerial procedures related to the operations of the Electoral College during each Presidential election. These duties include receiving and making available for public inspection the Certificates of Ascertainment of electors from the states and receiving the official sealed Certificates of Vote for transmission to the Congress. In preparation for the 1952 election, the first during which the Division had this responsibility, the legal staff prepared a pamphlet for distribution to state election officials containing all laws relating to activities of Presidential electors. Similar pamphlets have been reissued for each succeeding Presidential election.

**Documents of an informational nature submitted under the APA were dropped from the Code and published in digest form in the renamed *United States Government Organization Manual*, which was transferred from the Office of Government Reports within the Bureau of Budget when that Office was abolished on June 30, 1948 and was given the status of a special edition of the *Federal Register*. The first manual produced under the authority of regulations of the Administrative Committee was issued on August 4, 1949 and sold for \$1.00 per copy. Now known as the *United States Government Manual*, it continued to be one of GPO's "best sellers" until recently when agency directories on the Internet supplanted it as the chief means of finding information about Federal agencies.**

The decade of the Nineteen Fifties featured a number of innovations in the publications of the Division of the Federal Register aimed particularly at assisting the agencies that produced the rules published in the *Federal Register* and collected in the *Code of Federal Regulations*. The flare-up of the Cold War and commencement of the Korean Conflict resulted in renewed mobilization authorized by the Defense Production Act of 1950 and the prospect of accelerated rulemaking activity.

Recalling the inefficiencies during World War II involved in amending regulations that were scattered across many titles of the Code, the Division created a new *Title 32A, National Defense, Appendix*, to include all rules issued pursuant to the Act and related Executive orders, as a means of not disturbing the peacetime structure of the Code. The resulting volume was, by far, the largest single volume ever to be published by the *Federal Register* in seventy years – 3 1/2 inches thick and 2,799 pages long. By 1954 the special volume had quickly shrunk to a mere 430 pages as the mobilization program wound down, but Title 32A was not finally vacated until July 1, 1980.

Government regulatory activity slowed once again with the substantial reduction-in-force and the rapid dismantling of emergency economic controls that began in 1953, and the size of the *Federal Register* decreased by 30%. However, its importance was reaffirmed by the U.S.

9th Circuit Court on March 22, 1954 in *Hatch v. The United States*. The Court held that a rule involved in the case could not be enforced, even against a party having actual notice of it, because the issuing agency had not published it in the *Federal Register*.

In 1954, the President's Conference on Administrative Procedure adopted recommendations made by the *Federal Register* for uniform numbering, citation, and method of printing agency rules, changes that would have a lasting impact on the structure and ease of use of the Code.

A further aid to government agencies was the publication in 1955 of the first *Guide to Record Retention Requirements*. Intended to be the first of several guides that would gather together similar regulations across titles for ease of use, it continued to be a *Federal Register* publication until 1994, although other guides envisioned by the Division were never published.

# Presidential Documents

The role of the President in Federal rulemaking has evolved in the past seventy years along with the Federal Register system. **At the time of the establishment of the *Federal Register*, most Federal agency rules were issued as “orders” signed by the President.** Over time, the authority to issue and sign regulations binding on the public was delegated by various laws to department and agency officials, and the President’s use of Executive orders and proclamations was restricted largely to managing the operations of the Executive Branch.

The method of publishing Presidential documents evolved, as did the President’s use of them. Beginning in 1938, they first were included as citations in tables in Title 3 contained in the annual Supplements to the Code, and then published in full text separately in annual Compilations. From 1949 to 1964, Title 3 was published in two volumes, the first containing the tables of all Presidential documents published each year, and the second, an Appendix containing the text of selected documents that were codified. Since 1976, Title 3 has been published as a compilation of the full text of Presidential documents. The codified set of Presidential documents was published separately in 1976, 1979, 1981, and, most recently, in 1989. In addition, eight separate cumulations of Presidential documents were published between 1938 and 1975.

From its inception, the Federal Register Division had a central role in the drafting of Presidential Executive orders and Proclamations, examining and editing drafts immediately before Presidential signature, a role retained until the Carter Administration. Until that time the Division also notified agencies affected by Executive orders and proclamations.

In 1957 plans were developed for publishing an annual volume of messages and other papers of the President. The first volume, *Public Papers of the Presidents of the United States, Dwight D. Eisenhower, 1957*, attempted to bring together material which, until that time, had been scattered through the *Congressional Record* and the press generally, or which had existed only as White House mimeographed releases. The volume was presented to the President on May 15, 1958, establishing a tradition whereby the Director and editors of the first volume of the series of Public

Papers for each new President participate in the presentation ceremony for that volume, usually held in the Oval Office.

Creation of the *Public Papers of the Presidents* series gave birth to an editorial project directed both forward, for future Presidents, and backward, for the earlier papers of President Eisenhower and those of Presidents Truman and Hoover. The Franklin D. Roosevelt papers already had been privately published. The Division completed the first historical compilation of Public Papers, the Truman Papers, in October 1961. The first volume of the Hoover Presidential papers was published in 1974.



President Eisenhower receives the first volume of the *Public Papers of the Presidents* from Archivist of the United States Wayne C. Grover, accompanied by Mrs. Grover, May 15, 1958.

# Passing the Torch

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In 1959, after 24 years at the helm of the Division of the Federal Register, Major Kennedy handed over its reins to his deputy, David C. Eberhart, Jr. As part of a reorganization within GSA, the Division became the *Office of the Federal Register with the National Archives and Records Service*. The Office was organized into two major units, the Executive Agencies Division and the Presidential and Legislative Division, a structure that remained largely intact until 1995. **The first *Federal Register Handbook*, issued in 1960, described an ambitious new program aimed at bringing about continuous Government-wide improvements in drafting and publishing rule documents.** The handbook, which has been revised and reissued numerous times and is now known as the *Document Drafting Handbook*, was one of the means developed to clarify and expand upon the regulations governing the program.

Another was the commencement of technical instruction courses, led by *Federal Register* staff members, for executive agencies. A third aspect of the program was the development of a new codification system designed to simplify Federal procurement procedures and make them more readily available. Beginning “at home” with publication of the GSA’s Federal Procurement Regulation, the Division embarked on the task of bringing together all procurement regulations in a single volume under a common numbering system.

These reform efforts were timely by any measure, for the years 1960 – 1967 marked the longest sustained period of growth in the number of pages of documents printed in the daily *Federal Register* and in the number of pages and volumes of the *Code of Federal Regulations*. During those years the *Federal Register* experienced an increase of 89% in the number of pages, from 11,116 in 1959 to 21,088 in 1967. During that same period, the number of volumes in the CFR grew from 60 to

110, encompassing a 131% increase in the number of pages. Part of the growth in the size of the *Federal Register* came from the increasing use of extensive preambles in Rule and Proposed Rule documents, beginning in the mid-1960s.

But one of the most significant developments to impact operations during the 1960s was passage of the Freedom of Information Act (Pub. L. 89-487) in 1967 and the resulting increase of more than 40% in the number of requests from agencies seeking assistance in meeting their responsibilities under the Act. Although FOIA, as that Act has become known, increased the number of customer requests, it reduced the volume of material published in the *Federal Register* and the CFR in at least one way – agencies were permitted to incorporate by reference certain documents in their regulations, in lieu of publishing them in full text. The law gave the Director of the Federal Register authority to regulate this means by which Government and regulated entities rely on existing industry standards and test methods rather than creating their own. The Office of the Federal Register Library now contains more than 550 cubic feet of “IBR” materials which, like the rest of the *Code of Federal Regulations*, has the force and effect of law.

## **Weekly Compilation of Presidential Documents**

In 1965 President Johnson, concerned that his appointed officials speak with a united voice, approved that a new publication be developed to contain the statements, messages, and other

## Innovation and Experimentation



Three Directors of the Federal Register, Richard Claypoole (1995-1997), Martha Girard (1989-1995), and Fred Emery (1970-1979) are pictured at the center of this photograph of GSA Administrator Joel W. (Jay) Solomon presenting President Carter with the first volume of his Public Papers, October 31, 1978. At far left is Archivist James R. Rhoads.

Presidential materials released by the White House. In response, the Office of the Federal Register commenced publication of *The Weekly Compilation of Presidential Documents* on August 2, 1965. During the Carter Administration the Office established a direct link between the Weekly Compilation and the *Public Papers of the Presidents* series: the volumes of Public Papers became compilations of the weekly series. Encompassing approximately a six-month time period, each volume of the Public Papers contains the material in the weekly compilations with appropriate emendations and additions, rather than a set of selected papers edited separately.

As a fitting bookend to this period of transition, Fred J. Emery was appointed the third Director of the Federal Register in 1970. He served until 1979.

The Seventies was a period of creativity, experimentation, and innovation as well as a time of expansion of the staff to the largest size of its seventy-year history. On May 1, 1971 the distinctive modern logo that became so well-recognized over the following 29 years first appeared on the cover of the daily *Federal Register*. In 1973 the Office relocated from Indiana Avenue to the 8th and 9th floors of a GSA-leased building at 1100 L Street, NW.

The move provided an opportunity to experiment with new ways of organizing the editorial work of the office around teams of editors assigned to work on multiple publications. Although the organization of work based around multiple publications was eventually abandoned, the emphasis on teamwork, promoted by cross-training and the sharing of ideas and experiences across publications, was not.

The Administrative Committee of the Federal Register (ACFR) grappled with many additional new ideas: creating a separate publication for the *List of CFR Sections Affected*; adding “Highlights” of the contents of the daily *Federal Register* to the cover; staggering the revision dates of CFR volumes; expanding the *Weekly Compilation of Presidential Documents* to cover the “Presidency;” and establishing

morning and afternoon editions of the *Federal Register*. While many of these proposals were rejected, at the end of 1976 the ACFR approved rules that changed the face of every rulemaking document in the *Federal Register*.

Effective April 1, 1977, rulemaking agencies were required in their documents to summarize the action being taken, state its intended effect and supply the name and number of a person in the agency able to answer questions about the action. The now familiar seven headings — **Agency, Action, Summary, Dates, Addresses, For Further Information Contact, and Supplementary Information** — which continue to appear in regulatory documents, first appeared in *Federal Register* documents on that date.

This change was the culmination of many successive efforts to improve the clarity of rulemaking documents and to try to eliminate the use of “bureaucratese” in writing documents.

# Plain Language for a Change

Efforts to write regulations in plain English, and to reduce their number, received renewed attention under the Carter Administration. Following the President's promise that Federal regulations would be "written in plain English for a change," the Office carried out an active outreach program to regulatory agencies to assist them in achieving the goal of better written documents.

Staff in the Special Projects Unit within the Office taught legal drafting courses and carried out policy analysis leading to significant changes and enhancements in the rulemaking process. In 1977 alone, fourteen four-day workshops for regulation-writers were held, and more than 11,000 people attended over 130 introductory workshops across the nation.

In 1977 Congress for the first time required agencies to pay GPO for publication of their documents in the *Federal Register*. One result of this new policy was a trend among agencies to publish fewer documents for informational purposes only.

Another result was to add a new dynamic to the interaction between the Office of the Federal Register and agencies publishing documents – give and take over the adequacy of documents submitted by agencies motivated by reducing their costs of publishing in the *Federal Register*.

Adoption of the Privacy Act of 1974 (5 U.S.C. 552a) brought new responsibilities to the Office. Where the Freedom of Information Act had sought to open up government and its activities to the people, the Privacy Act



sought to close up unauthorized access to government records containing personal information about citizens. Under the Act, agencies were required to publish in the *Federal Register* digests of their systems of records containing personal information about individuals. The Office then printed the first annual *Privacy Act Compilation*, 1975. The publication became a biennial issuance beginning in 1989. The *Privacy Act Compilation* was the first to be published also in CD-Rom format (in 1993) and the first official Federal Register publication not to be printed on paper (beginning in 1995).



The vertical logo which first appeared on the cover in 1970 has remained a well recognized trademark although it has been displayed in three different fonts.



# Innovations in Printing

In the mid-1970s, the Office was informed by the Government Printing Office that GPO was converting from “hot metal” printing processes to the then-emerging electronic photo-composition technology. **Soon the linotype and monotype machines, and tray upon tray of lead type, long associated with printing, would be gone from the GPO.** At the Office of the Federal Register, glue pots and brushes, along with the processes of manually cutting and pasting manuscript, would disappear. By the end of the decade the conversion project carried out in collegial fashion by the OFR and GPO was complete. **The April 2, 1979 issue of the *Federal Register* was the first issued with the new typography and other enhancements made possible by the conversion. At the time, the creation of an electronic publication database was seen largely in the context of a better way to print paper.** However, it set the stage for the virtually limitless access and information delivery options that began to be available a few short years later through the Internet.

Using a more conventional means of improving access to the material published in the *Federal Register*, the Administrative Committee of the Federal Register issued a rule in 1980 requiring agencies to identify topics and categories of persons affected by rules using common indexing terms. The resulting *Thesaurus of Terms* was required to be used for indexing of published documents beginning April 1, 1982.

Commencing in 1980 and using *Title 40, Protection of the Environment* as a test title, CFR editors began to edit the database of CFR titles on a daily basis to enable quicker turnaround of the annual revision of the title after its revision date. That this innovation could have far-reaching impact was evident to the Office at the time. The National Archives 1980 Annual Report noted prophetically that: “A side benefit may well be the creation of an on-line current CFR database for

information retrieval,” although the author may not have foreseen the extent of the impact of the coming Internet.

In the 1980s the clear lines distinguishing editing processes from printing processes began to blur as advances in technology pushed into both professions. A concrete expression of this transformation was GPO’s placement of an “outpost” of its production network within the physical office space of the *Federal Register*. As with the conversion from “hot metal” to electronic processes, this transformation was, first, a transformation related to improving the printing processes to permit collaboration of the editors and printers earlier in the production process. But



In 1981 John E. (Jeb) Byrne became the fourth Director of the Federal Register, serving until 1989.

it also made available to editors a new apparatus — a computer terminal — that would become the gateway to additional, far-reaching changes in business practices. As if to herald those changes, in



During 1979, the Office completed the conversion of its typesetting operations from manual to electronic. At the same time, Office of the Federal Register staff members began to use computer terminals for the first time within the Office to produce and update publications such as the *Code of Federal Regulations*.

# The Information Age

1985 the Administrative Committee of the Federal Register approved a pilot plan for the Office to receive machine-readable documents from designated agencies.

During the Reagan Administration, the regulatory landscape shifted with the increasingly active involvement of the Office of Management and Budget (OMB) in the review of agency regulations, a trend that has become standard practice and was made official with the creation of the Office of Information and Regulatory Affairs. The “Supplementary Information” sections of rule documents in the *Federal Register* contain administratively and legislatively required agency analyses of the impact of the rules on a multitude of subject areas.

## NARA Independence

During Congressional negotiations relating to legislation proposing to remove the National Archives from the General Services Administration and to create the National Archives and Records *Administration* as an independent agency, the Office of the Federal Register was briefly “in play” as one of the negotiable items. But when approved by President Reagan on October 19, 1984, the newly independent agency retained the Office of the Federal Register and the Office joined the agency-wide celebrations when Public Law 98-497 became effective April 1, 1985. That same year, coincidentally, the Office celebrated the 50th anniversary of its establishment.

**By the 50th anniversary of the publication of the first issue of the *Federal Register* on March 14, 1986, many of the legal and administrative issues associated with defining and organizing the Federal Register system had been largely resolved. The system by which agencies promulgate proposed rules by publishing them in the *Federal Register*, seeking comment from the public, responding to those comments, and issuing Final Rules in the *Federal Register*; and by which editors incorporate those new and amended rules into the *Code of Federal Regulations*, was well-defined and firmly established.**

Thus, while the Office of the Federal Register has maintained and refined this system and grappled with additional legal issues during the last two and a half decades, the focus of its innovative and creative energies during that time shifted to the challenges and opportunities presented by advances in technology and most recently, the universal access to technology.

In November 1989, Martha L. Girard was appointed the fifth Director of the Federal Register. That year the office took its next step along the road to automation with the introduction of the first “local area network” of personal computers. For the first time, a computer terminal was placed on the desk of every OFR staff member. One of the most important technical innovations for which these personal computers were put to use was the automated Document Tracking

System, created to parallel and monitor the movement of paper documents through the production processes and to produce management reports and various elements of the *Federal Register's* Finding Aids.

The need to renovate the office building in which the Office of the Federal Register was located caused the General Services Administration to relocate the Office, in July 1992, to 800 North Capitol Street, NW, a location directly across the street from the Government Printing Office and a move that could not have been better timed to benefit the production processes of *Federal Register* publications. The daily movement of GPO employees, Federal Register staff, and the documents back and forth between the two agencies was greatly facilitated by the relocation.

Every hour GPO messengers pick up materials from the Office of the Federal Register, and every afternoon editors from the Federal Register walk to the GPO to proofread copy for the next day's issue. However, the most significant movement between the two buildings became that of electrons carrying the bits and bytes of electronic files that are the building blocks of the *Federal Register*, the *Code of Federal Regulations*, the *Weekly Compilation of Presidential Documents*, and all of the other publications of the Office. The laser beam link between the two building across which these electronic files travel was installed in 1993.

These innovations never changed one operational assumption that has been in place since the commencement of the publication of the *Federal Register*: the *Federal Register* is published every Federal business day without regard to weather emergencies or other disruptions that close other Federal agencies. With its partner, the GPO, the Office of the Federal Register has never failed in this goal.

The Office of the Federal Register entered the era of Internet access to information on October 1, 1992 with the debut of FRENDD, the Federal Register Electronic News Delivery System. This electronic bulletin board provided immediate access to selected *Federal Register* finding aids and was enthusiastically embraced by customers until replaced by the next generation of Internet-based resource.

That resource came when Congress directed GPO to make the *Federal Register* available on-line. Intense negotiations and planning between the OFR and GPO followed and on June 8,

1994 the first electronic version of the *Federal Register* appeared on a newly inaugurated GPO Access service. Along with it, GPO posted the full text and graphics of all the daily *Federal Registers* issued since January 3, 1994. The *Code of Federal Regulations* was added to GPO Access in 1996. At its September 19, 1996 meeting the Administrative Committee of the Federal Register gave the on-line version of the *Federal Register* and its companion publications the status of official editions.

Richard L. Claypoole, appointed the sixth Director of the Federal Register in 1995, reorganized the Office to create the structure that remains in place as the 70th Anniversary issue of the *Federal Register* is issued. Supervising production in five units is the Managing Editor. Three of the production units are focused on publishing the daily *Federal Register*: Customer Service, Scheduling, and Daily Issue. The CFR Unit edits and publishes revisions to the *Code of Federal Regulations*, and the Presidential and Legislative Publications Unit has responsibility for the remaining publications of laws and Presidential materials. The work is supported by the Legal Services and Policy Staff and by the Technical Services Staff. The size of the staff has ranged from 60 to 65 since the reorganization.

The seventh and current Director of the Federal Register, Raymond A. Mosley, was appointed in November 1996.

Although the Office of the Federal Register is not often directly involved in litigation, in 1995 and 1996 the Office became entangled in a lawsuit



The U.S. Government Printing Office and the Office of the Federal Register are partners in publishing the daily *Federal Register*. Here a GPO employee operates one of the bindery machines, ca. 1960.

that resulted in a reaffirmation of the substantive role of the Office in ensuring an orderly process for filing and publishing regulations. In *Kennecott Utah Copper Corp. v. U.S. Dept. of Interior* the court ruled that the Office has the authority to review documents in confidential consultation with agencies and to enforce publication and codification requirements. [88 F.3d 1191 (D.C. Cir. 1996)].



Public Printer Bruce James, Archivist Allen Weinstein, and the seventh Director of the Federal Register, Raymond A. Mosley, presented the *Public Papers of the Presidents, 2002, Book I* to President George W. Bush.

# The Age of the Internet

In the last decade, the tools of the information age have been more fully integrated into production processes, and the vast power of new technologies has been harnessed as never before to provide instant access to the wealth of information published each day in the *Federal Register* and its companion publications.

The volume of that information has never been greater. The annual editions of the *Federal Register* published since 1991 contained more pages than the editions in all but three of the 55 previous years. Since 2002, each annual edition has contained more than 70,000 pages of text, with the largest edition, published in 2004, containing 75,675 pages. The largest single document ever published in the *Federal Register* was a 6,653-page compilation of public comments on the Justice Department's proposed settlement in its antitrust case against Microsoft, contained in the issue of May 3, 2002. The Office has continued to experiment with a number of typesetting style changes, some of which were adopted to make this vast quantity of information more readable and easier to use. With the first issue in the 21st Century, published on January 3, 2000, the Office unveiled a new cover, as well.

The Office also responded to the interest expressed by agencies in having the capability to submit documents to the Office electronically. The most significant hurdle to providing such capability was the requirement that documents be signed in a manner that could be authenticated if challenged in court. With this requirement in mind, and contemplating a time when documents

might exist only in electronic form, the Office launched its Electronic Editing and Publishing System (or eDOCS) development project in 2001. Working with GPO under the leadership of Public Printer Bruce James, the Office of the Federal Register published the first *Federal Register* to contain documents submitted electronically and managed by the eDOCS system on October 5, 2003. Approximately one-half of the documents contained in the 70th Anniversary issue of the *Federal Register*, published on March 14, 2006, will have been processed through the eDOCS system. One-fourth of those documents will have been submitted to the Office by e-mail and digitally signed.

Ultimately, improving processes is all about improving the presentation of the information and access to the information for which the Office of the Federal Register is responsible. That work of innovation, ongoing for 70 years, has not ended. Beginning on February 15, 2001, and every working day since that date, every one of the more than 200 volumes of the 50 titles of the *Code of Federal Regulations* has been revised and made available online in its most current form. This Electronic Code of Federal Regulations (e-CFR) is the realization of

the dream described in NARA's Annual Report 25 years ago. Editors in the CFR Unit revise each title of the CFR each day based on the amendments published in that day's issue of the *Federal Register*. The electronic database generated by their work is both the source for printing annual revisions of the books, as has been done since 1967, and the source of the on-line e-CFR version.

When the first issue of the *Federal Register* came off the presses on March 14, 1936, the modest sixteen-page booklet was bundled and wrapped and presented to the public by mail. Some subscribers waited two weeks to receive it. On March 14, 2006, when the 70th Anniversary issue of the *Federal Register* is ready, it will be placed on the World Wide Web at approximately 6:00 a.m., and by the end of the day more than 150,000 individuals will have searched its contents for information critical to their lives. Later that day, editors at the Office of the Federal Register will insert all the amendments to the *Code of Federal Regulations* contained in the 70th Anniversary issue into their appropriate locations within one of the 220 volumes of the electronic CFR. The vision of public access to the actions and documents of Government will have been realized one more day.



[www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html)



Cover of the *Federal Register*, March 14, 2006.

# THE FEDERAL REGISTER

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MARCH 14, 1936 — MARCH 14, 2006

OFFICE OF THE FEDERAL REGISTER

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION