

## **EMAIL TRANSMITTAL**

**From:** Thornton, Lori, DCA

**Sent:** Friday, May 10, 2019 2:43 PM

**To:** Crawford, John W.

**Cc:** Hall, Laurie B.

**Subject:** DLC Charge, H.R. 1654, Federal Register Modernization Act

**Importance:** High

Acting Deputy Director Crawford,

As charged by the previous acting deputy director in March, the Depository Library Council has reviewed H.R. 1654, the Federal Register Modernization Act. Attached you will find an issue brief which includes our inferences on how passage of H.R. 1654 into law may impact the Federal Depository Library Program.

Respectfully,

Lori Thornton

**Lori Smith Thornton**

**Depository Library Council Chair**

Public Services Bureau Chief

New Mexico State Library

Department of Cultural Affairs

1209 Camino Carlos Rey

Santa Fe, NM 87507

(505) 476-9717

## Issue Brief: The Federal Register Modernization Act, H.R. 1654 / S. 1078

The second *Federal Register Modernization Act* (H.R. 1654,<sup>1</sup> S. 1078<sup>2</sup>) has passed the U.S. House of Representatives and is now under Senate consideration. Both it and its unpassed 2014 predecessor aim to permit the official publication of the *Federal Register (FR)*<sup>3</sup> and *Code of Federal Regulations (CFR)*<sup>4</sup> in online form in place of print.<sup>5</sup> The PDF form of the *FR* published on [govinfo.gov](http://govinfo.gov) is already considered an official version,<sup>6</sup> and also serves as the source material for [FederalRegister.gov](http://FederalRegister.gov).

**Current Bill.** Introduced in the House (116th Congress) March 8, 2019 by Mark Meadows (R-NC) H.R. 1654 passed overwhelmingly four days later, 426-1. Referred to the Senate on March 13, it now sits with the Committee on Homeland Security and Governmental Affairs. Senators David Perdue (R-GA) and Sheldon Whitehouse (D-RI) issued an April 9 press release explaining their bipartisan sponsorship of the *Federal Register Modernization Act* (S. 1078) to “prohibit the Government Printing Office [sic] (GPO) from automatically printing copies of the *Federal Register*, which is already available electronically, without charge for Members of Congress or any employee of the U.S. government. This will allow the federal government to better utilize technology, ease administrative burdens placed on agencies, and promote the *Federal Register’s* dedication to using digital platforms to better inform the public.”<sup>7</sup>

**Predecessor Bill (2014).** The first *Federal Register Modernization Act*, H.R. 4195,<sup>8</sup> from 2014 would have required the *Federal Register (FR)* to be published, rather than printed, and that documents in the *FR* be made available for sale or distribution to the public in published form. It would have revised the requirements for filing documents with the Office of the Federal Register for inclusion in the *FR* and for the publication of the *CFR* to reflect the publication requirement. This bill passed the House 386-0 in July 2014 but was never voted on in the Senate. The Congressional Budget Office cost estimate found that the bill “would have no significant effect on the federal budget” if passed.<sup>9</sup>

**Law Librarians’ Objections.** In 2014, the American Association of Law Libraries (AALL) opposed the predecessor bill, H.R. 4195, because it reduced overall accessibility by “making it harder for citizens to find their government’s regulations.”<sup>10</sup> Specifically, AALL noted that “members of the public, librarians, researchers, students, attorneys, and small business owners continue to rely on the print” based on a recent survey conducted by AALL and that the indexes to the *FR* and *CFR* are essential and necessary to provide meaningful access to this information. Furthermore, they pointed out the negative impact on access to those Americans who rely upon print versions of these titles because they do not have Internet access or do not use the Internet.

**Distinctive elements of the current bill.** As of this writing, a congressional cost estimate has not been received for H.R. 1654, and we understand from the GPO perspective that the passage of this bill would have minimal impact on the printing

revenue for GPO. Since 2014 there has been a significant reduction in *FR* print copies produced by the GPO, from approximately 6,000 print copies in 2014 to the approximately 500 (paper and microfiche) copies printed today.

The specific points of this bill are:

- Incorporates the *Federal Register Printing Savings Act of 2017* (S. 1195)<sup>11</sup>, which became Public Law No: 115-120 when H.R. 195 was passed<sup>12</sup>, barring GPO from distributing print copies of the *FR* to Members unless the Member specifically requests copies.
- Requires indices and other finding aids for the *FR* and *CFR*
- Allows the Administrative Conference for the *FR* (ACFR) to determine the manner and form in which federal agencies submit documents for publication
- Allows the Office of the Federal Register to publish the *FR* during a Continuity of Operations (COOP) event if the GPO is unable to so, until the GPO is able to resume publication

**Law Librarians Response to Current Bill.** The AALL has weighed in on the current bill, sending its membership this March 2019 message:

AALL ADVOCACY SAVES THE FEDERAL REGISTER & CFR INDEXES.  
Thanks to AALL's advocacy . . . the House voted on an amended version of the Federal Register Modernization Act (H.R. 1654) last week *that preserves requirements for the Government Publishing Office and Office of the Federal Register to produce indexes for the Federal Register and Code of Federal Regulations (CFR)* [emphasis added]. AALL had opposed the version of the bill as introduced because it eliminated requirements to produce the indexes.

The Council supports this advocacy effort and its outcome. The FDLP community is grateful to our AALL colleagues for securing this change in language, and to GPO for facilitating continued publication of the indexes.

**Feedback Gathered at Depository Library Council (DLC) Spring 2019 Meeting.** In April, the DLC hosted an hour-long information session providing background on the current legislation, with a chance for virtual conference attendees to ask questions and share reactions.<sup>13</sup> Two Council members affirmed still wanting the print *FR* in their libraries, with six more community members agreeing via virtual discussion. The depository library community voiced the following during that discussion:

- The printed *FR* is an instructive teaching tool in libraries, a visual reminder of the current output and history of proposed and final regulations and vital executive branch communications.
- Browsing codification in print is more efficient, especially for a new user, and the hierarchy is better understood in print.

- Telecommunications outages, weather events, and natural disasters affect online access. Print copies of the *FR* offer additional access points, and help bridge the digital divide.
- The Office of the Federal Register has “essential” status in respect to shutdown protocol, and FederalRegister.gov remains active through any government shutdown.
- Will the Administrative Conference of the United States make the eCFR an official version if this bill passes?
- How will the microfiche format be affected? Microfiche is still listed as an official format in regulation. GPO will continue to produce until such time as the regulations change or a microfiche producer can no longer be found.

Amy Bunk, Director of Legal Affairs & Policy, Office of Federal Register, indicated in her portion of the presentation that the Office considers the PDF form of the *FR* to be official and authoritative based on an interpretation of 1 CFR 5.10, which states that the *Federal Register* is published in formats of paper, microfiche, and online on GPO Access. However, there is concern in the community that the language in this *CFR* provision is not strong enough in designating the online version of the *FR* as controlling and authoritative for legal citation purposes. If the print *FR* is discontinued, this *CFR* provision should be strengthened regarding online access.

**Depository Library Council’s Response and Recommendation.** The DLC believes the passage into law of this bill will have minimal significant direct impact on the Federal Depository Library Program (FDLP). It was noted that the ACFR, described in section 1506, is critical to the continued print production of the *FR*. The Deputy Director of GPO sits on the committee and should advocate strongly for the production of adequate print copies for the FDLP community to serve the library patrons of our country. Even the reduction of adequate copies for FDLP libraries would impact overall public access to the *FR* and that is, of course, of great concern to both the community and the DLC.

## References

1. *H.R. 1654 - Federal Register Modernization Act*, 116th Congress (2019-2020), <https://www.congress.gov/bill/116th-congress/house-bill/1654/>
2. *S. 1078 - Federal Register Modernization Act*, 116th Congress (2019-2020), <https://www.congress.gov/bill/116th-congress/senate-bill/1078>
3. Federal Register, <https://www.govinfo.gov/help/fr#about>
4. Electronic Code of Federal Regulations, <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>
5. Amy Bunk and Erik Beck, “H.R. 1654 - Federal Register Modernization Act,” *Spring 2019 Depository Library Council Virtual Meeting*, April 15, 2019, <https://www.fdlp.gov/spring-2019-depository-library-council-virtual-meeting>

6. Bunk and Beck, "H.R. 1654,"  
<https://www.fdlp.gov/spring-2019-depository-library-council-virtual-meeting>
7. David Perdue, *Senators Perdue, Whitehouse Take Action To Cut Wasteful Spending & Modernize Federal Government*, April 9, 2019,  
<https://www.perdue.senate.gov/news/press-releases/senators-perdue-whitehouse-take-action-to-cut-wasteful-spending-and-modernize-federal-government>  
<https://www.congress.gov/116/bills/s1078/BILLS-116s1078is.pdf>
8. *H.R. 4195 - Federal Register Modernization Act*, 113th Congress (2013-2014),  
<https://www.congress.gov/bill/113th-congress/house-bill/4195>
9. *Congressional Budget Office Cost Estimate: H.R. 4195 Federal Register Modernization Act*, Congressional Budget Office, April 1, 2014,  
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10. *The Federal Register and Code of Federal Regulations*, American Association of Law Libraries, March 2014,  
<https://www.aallnet.org/wp-content/uploads/2017/11/2014-IB-One-Pager-The-Federal-Register-and-Code-of-Federal-Regulations.pdf>
11. *S. 1195 - Federal Register Printing Savings Act of 2017*, 115th Congress (2017-2018), <https://www.congress.gov/bill/115th-congress/senate-bill/1195>
12. *H.R. 195 - Making further continuing appropriations for the fiscal year ending September 30, 2018, and for other purposes*, 115th Congress (2017-2018),  
<https://www.congress.gov/bill/115th-congress/house-bill/195>
13. Bunk and Beck, "H.R. 1654,"  
<https://www.fdlp.gov/spring-2019-depository-library-council-virtual-meeting>