

Code of Federal Regulations

Regulations are created and used by executive agencies to “clarify” the intent and scope of federal statutes, which an agency is charged with administering or enforcing. **Statutes** are the actual laws passed by Congress; **regulations** are the “who, what, when, where, and how” involved in administering and/or enforcing the statute.

Modern History

As the New Deal unfolded in the early 1930's and Congress began to increase both the number of agencies and the scope of the authority of those agencies, the agencies began promulgating voluminous regulations. There was no mechanism for publishing, codifying, accessing or updating these regulations. There was considerable confusion about which regulations were in effect at any given time. In several 1934 Supreme Court cases involving administrative law violations, difficulty in keeping abreast of the current body of administrative law became obvious. Neither the defendants nor the government correctly understood which regulations were currently in effect. In response, Congress passed the Federal Register Act (ch. 417, 49 Stat. 500 (1935)). The Act mandates the daily publication of the Federal Register, whose purpose is to serve as a central repository of the publication of all newly adopted rules and regulations. Furthermore, publication in this periodical is constructive notice to all who may be affected by a regulation.

Although the Federal Register was helpful in notifying the government and people of changes and additions to federal regulations, the regulations were still not codified. Congress amended the Federal Register Act in 1937 to require codification and subject access to the regulations through publication in the **Code of Federal Regulations** (CFR). The first CFR was published in 1939.

The purpose of the CFR was/is to provide a system of categorization whereby all the regulations promulgated [created] by a federal department or agency on a given subject can be located and tied to the corresponding statute. The CFR does an admirable job of providing that service.

As stated in the opening paragraph, regulations are intended to elaborate on the working details of a statute. It is beyond Congress' ability to be experts in every field concerning which it may be called upon to legislate. The US Supreme Court has referred to the text of Congressional legislation as “the broad language of the statute”, which often times requires more detail to be properly placed into effect. These “details” are found in the “implementing regulations” promulgated by the agencies that must administrate and/or enforce a statute. Federal agencies are charged with faithful implementation and enforcement of the laws [statutes]

through the regulations they promulgate. Although properly speaking, regulations are not law, rules and regulations have the full force and effect of the law.

[Editor's Note - *It should be noted that federal statutes, as well as their associated regulations, only have force and effect upon those persons who are properly within federal jurisdiction, and has no force or effect upon anyone else. See the section, [Federal Jurisdiction](#), within this website for more information on federal jurisdictional limitations.*]

In 1946 the Administrative Procedures Act (APA) was passed clarifying the process of making regulation, allowing for greater accessibility and participation by all citizens. The APA required the publication in the Federal Register of all proposed rule changes and a period for public comment. Proposed and final regulations that have general applicability and legal effect are **required** to be published in the Federal Register. The administrative regulation-making process requires that proposed regulations be published and that a comment period be provided. When the comment period closes, the agency may finalize the regulation. Once the regulation becomes final, it is published again in the Federal Register and then codified into the Code of Federal Regulations.

In 1990 the regulatory landscape was changed yet again by passage of the Negotiated Rulemaking Act of 1990 (NRA) [currently codified to 5 U.S.C §§ 561-570]. The NRA allows for greater involvement by affected parties in the drafting of regulations. Changes under NRA are more procedural than substantive and need not be addressed further in this document.

Regulations Control the Law

The power of regulations is that they control the application of the statute.

“... we think it's important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act would impose no penalties on anyone”.

California Banking Association v. Schultz, 416 US 21 (1974)

While not all statutes require regulations, for practical purposes it can be generally considered that a statute for which an implementing regulation has never been created has no administrative or judicially cognizable consequence for failing to follow the statute.

“Although the relevant statute authorized the Secretary to impose such a duty, his implementing regulation did not do so. Therefore we

held that there was no duty to disclose... United States V. Murphy, 809 F.2d 142, 1431

“The reporting act is not self-executing; it can impose no duties until implementing regulations have been promulgated.”

California Bankers Ass’n v. Schultz, 416 US 21

“For federal tax purposes, federal regulations govern.”

Lyeth v. Hoey, 305 US 188, 59 S. Ct 155

“...failure to adhere to agency regulations may amount to a denial of due process if the regulations are required by constitution or statute.”

Arzanipour v. Immigration and Naturalization Service, 866 F. 2d 743 746 (5th Cir. 1989)

Although regulations are controlling in most circumstances, and they have the full force and effect of law, it is important to note that regulations can never expand upon the powers vested in the agency by a statute. Here is how the California Supreme Court phrased it:

Administrative agency may not, under guise of its rulemaking power, abridge or enlarge its authority or act beyond powers given it by statute which is source of its power; administrative regulations that alter or amend statute or enlarge or impair its scope are void.

San Bernardino Valley Audubon Soc. V. City of Moreno Valley, 51 Cal.Rptr.2d. 897 (1996, Cal.App. 4th Dist)

On this issue the federal courts have stated:

“...power to issue regulations is not power to change the law...”

US v. New England Coal and Coke Company 318 F.2d 138 (1963)

Making Sense of the Code of Federal Regulations

As one can clearly see, the regulations are preeminent in their significance. When attempting to understand the specifics of a law, one should always research not only the applicable statutes, but also the associated regulations. To overlook the regulations would be a critical mistake.

Statutes are generally (but not always) codified into the United States Code (USC). [See the section, [United States Code](#), within this website for more details on the United States Code.] The CFR is a ***much larger*** compendium than is the USC. This is because the CFR provides all the intricate and/or technical details that are required to properly administrate or enforce a statute. As an example, a statute

may be only three paragraphs in length, but the implementing regulation(s) may be eight pages long! Additionally, there may be numerous regulations associated with just one statute! This reality makes the CFR many times larger than the USC. In the average law library the USC (annotated lawyer's edition) takes up a modest size bookcase. The CFR usually takes up the better part of a wall.

The CFR, like the USC, is separated into 50 distinct "titles". Each "title" addresses a distinct subject matter. Examples are; Title 26 – Internal Revenue; Title 27 – Alcohol, Tobacco and Firearms; Title 28 – The Judiciary; Title 8 – Immigration and Naturalization; Title 19 – Customs. These titles are then broken down into Parts and Subparts. As we stated earlier, the regulations are voluminous – Title 26 of the CFR has 799 Parts (although some are reserved for future use).

There is a numerical relationship between the subject matter in the Titles of both the USC and CFR. For instance, in the USC, Title 8 deals with Immigration matters – so does Title 8 of the CFR. Title 26 of the USC addresses taxes; so does Title 26 of the CFR. This type of number-to-subject relationship between the USC and CFR exists in all but a few of the titles.

The format that is generally used to designate a section within the CFR is exemplified by this citation: **26 CFR 301.6012**.

That citation is broken down as follows: **26 CFR** means the 26th Title of the CFR. "**301**" is a reference to Part 301 within Title 26. "**6012**" is the section of the USC that this section of the CFR is expanding upon. Don't let that last sentence confuse you – the numbers that appear after the decimal point in a CFR citation are always the same as the section number of the USC to which the regulation pertains. However, since the regulations are more detailed than the statute, the section number for the regulation may be broken down into numerous "sub-sections" that do not appear in the USC.

As an example, within Title 26 of the USC there is §641. For the CFR to expand on that section properly, Part 1 of the CFR offers the following sections:

- 1.641(a)-0
- 1.641(a)-1
- 1.641(a)-2
- 1.641(b)-1
- 1.641(b)-2

You can easily see why the CFR is a larger compendium than the USC when there are five sub-sections in the regulations to clarify just one statute.

Each “Part” within a Title of the CFR addresses a specific aspect of the subject matter of the Title. We wish we could tell you that there is a standardized system in place for determining which aspects of the subject matter get codified to which Parts of a Title, but such is not the case. Each title deals with such diverse issues that no hard-and-fast rule can be constructed for how areas are broken down and assigned into the various Parts of each Title.

In order to find the precise location of a regulation within the CFR one might find the “Contents” section at the front of each CFR Title to be useful. Additionally, the publisher of the CFR [the National Archives and Records Administration (NARA)] has been kind enough to publish an appendix to the CFR, called the “CFR Index and Finding Aids”. Inside that volume one will find (amongst other things) the “Parallel Table of Authorities and Rules”. This “table” lists all of the sections of the USC and then provides you with the CFR location of the regulations that have been promulgated for any specific USC section. [The “table” also provides this same cross-reference system for Statutes-at-Large and Executive Orders.]

In order to clarify the formatting we’ve just discussed, we’ll examine some CFR Parts. Here is a small sample of the Parts from Title 26 [CFR]:

Taxes upon individuals	Part 1
Estate tax	Part 20
Gift tax	Part 25
Employment tax	Part 31
Taxes on wagering	Part 44

It should be noted that there is also a numerical relationship between the individual section of the USC and the corresponding section of the CFR. Let’s look at an example. Section 6001 of the USC is the section that requires the keeping of books and records. The purpose of the regulation is to specify **who** needs to keep such books and records, and under what circumstances.

Keeping in mind from the list above that different Parts address different taxable activities and types of taxes, one must ask if §6001 applies to **all** taxes, or just **some** taxes and/or taxable activities. The way we can make that determination is to examine the CFR to see which types of taxes (or taxable activities) require the keeping of books and records, and which do not. After examining the CFR and its Parts, we find that the Secretary of the Treasury [who creates tax regulations] has promulgated **only** the following regulations concerning §6001:

- Title 26 [CFR] – Parts 1, 31, 55, 156
- Title 27 [CFR] – Parts 19, 53, 194, 250, 296

So...§6001 (the requirement to keep books and records) has been made enforceable by the Secretary of the Treasury upon only 4 types of taxes in Title 26, and 5 specific taxable activities in Title 27 (Alcohol, Tobacco and Firearms).

In Title 26, those taxes (Parts) are:

- Part 1** *Taxes Upon Individuals*
- Part 31** *Employment Taxes.*
- Part 55** *Excise Taxes on Real Estate Investment Trusts and Regulated Investment Companies.*
- Part 156** *Excise Taxes on Greenmail.*

In Title 27, those taxable activities (Parts) are:

- Part 19** *Distilled Spirit Plants.*
- Part 53** *Manufacturers Excise Taxes—Firearms and Ammunition.*
- Part 194** *Liquor Dealers.*
- Part 250** *Liquors and Articles from Puerto Rico and the Virgin Islands.*
- Part 296** *Misc. Regs Relating to Tobacco Products and Cigarette Papers and Tubes.*

Therefore, according to the regulations promulgated by the Secretary of the Treasury, if you are not involved in one of the activities listed above (Parts 19, 53, 194, 250, & 296), or liable for one of the taxes listed above (Part 1, 31, 55, & 156), there is no legal requirement for **you** to keep books and records.

When There Are No Regulations

It should be kept in mind that the government routinely attempts to use a regulation for matters concerning which a regulation has no applicability.

Our editor was once called by friends who own a tanning salon. Not long after they opened, an FDA official visited their business and demanded to inspect the tanning beds. The owners (a husband and wife who are not Patriots) were taken aback and refused to allow the inspection. The official left saying that he would return at a later date. Our editor researched the FDA regulations for the owners and found that the only regulations promulgated on the subject of “tanning devices” dealt with tanning devices used for medical purposes. In other words, tanning devices used by a doctor’s prescription, or administered directly by the doctor’s staff. Obviously there was no regulatory authority for the FDA to inspect “recreational” tanning beds. The owners wrote a succinct letter to the FDA official informing him of his complete lack of jurisdiction to inspect the beds in their business. Two weeks later the official returned to their business and stated that if they did not allow the inspection right then, he would return later in the day with a team of armed US

marshals and close their business down and take their 12 month-old infant (who was present at the business with them) into “protective custody”. While the owners capitulated and allowed their beds to be inspected, the FDA official never presented any evidence of FDA jurisdiction. He simply used crude threats of violence to create fear and gain compliance.

Of course the underlying reality is that the FDA official was initially relying on the “medical” regulations until the owners called him to accountability on the issue. Once the official’s misrepresentation was exposed, he chose the path so common to petty tyrants – he chose to toss the law out the window and use threats and coercion to accomplish what the law would not support.

The regulations can be a powerful tool, but one must recognize that courage is an essential element when facing a dishonest government.

What If There Are Regulations?

Many times there are regulations concerning a matter that the government has contacted you about. Does this mean you must comply with the regulations? Maybe “yes” and maybe “no”. One must remember that regulations only clarify the implementation of a statute. Therefore the question becomes, “Under what authority did Congress pass the statute?” In other words, if a statute was passed under the federal government’s interstate commerce authority, the regulations still apply only to matters over which the US has interstate commerce authority. Accordingly, if a government official shows up at the local shoe repair shop and attempts to impose their authority by presenting regulations that were written for a statute that relies on US interstate commerce authority, it is extremely unlikely that the regulation has any lawful applicability to the local shoe repairman.

Although today most Americans prefer to let the government “tell them” what is right or wrong, the US Supreme Court has held that it is the duty of each Citizen to determine for himself if the government actually has the authority it claims in any given situation. This dovetails perfectly with one of the founding principles of our form of government, which is that all government power is derived from the consent of the governed [that’s **you**]. Since the government’s authority to act is derived from the Citizens, there is no better person to determine the truth about the government’s authority than **you!**