



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

CPSC EXECUTIVE SESSION
March 18, 1976

1750 K Street, N.W.
9:30 a.m.

PRESIDING: Commissioner Pittle

PRESENT: Commissioner Franklin
Commissioner Kushner

ITEM

Proposed Recommendation for Strengthening the Informational and Notice Giving Functions of the Federal Register System (41 FR 7984).

DECISION

The Commission approves sending the attached letter setting forth its comments on the recommendation.

VOTE

Concurring in the above decision:

Chairman Simpson	<u>R. Simpson</u> (3-15-76)
Commissioner Franklin	<u>B. Franklin</u>
Commissioner Kushner	<u>J. Kushner</u>
Commissioner Pittle	<u>P. David Pittle</u>

Submitted by:
Commissioner Pittle

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

MAR 19 1976

Mr. Emmet J. Gavin
Executive Director
Administrative Conference of the
United States
2120 L Street, N.W., Suite 500
Washington, D.C. 20037

Dear Mr. Gavin:

In response to your letter of February 12, 1976, and the Federal Register notice of February 23, 1976 (41 FR 7984) inviting comments on the Proposed Recommendation for Strengthening the Informational and Notice Giving Functions of the Federal Register System, the following comments are submitted. The comments are numbered to correspond with the numbering systems used in the proposal.

A. Preservation of Documents in the Code of Federal Regulations.

1. We endorse the proposal that an agency's organization and functions (including delegations of authority) be published in the Rules and Regulations of section of the Federal Register rather than in the notice section. This seems to be a matter easily within the Control of the Office of the Federal Register. There appears to be a related problem and that is which delegations of authority should be published in the Federal Register and which should not be published. Some direction in this area should be provided all agencies.

2. We agree with the intent of this paragraph to provide a better method of preserving statements of basis and purpose. We suggest that a government-wide system be developed whereby significant preambles to regulations be published in the Code of Federal Regulations (the Code). Too often this agency is required to expand the body of a regulation so that important statements of policy will be included in the Code. However, if statements of policy, scope and purpose are included in the Code, the legal status of these statements should be made clear. The idea to supply Federal Register citations to pending rulemaking proceedings that affect existing regulations is a good one. In addition, we are unaware of any coordination between the involved agency and the office of the Federal Register when printing the Code but we think it would be extremely helpful if the agency was provided an opportunity to review a draft of the volume or volumes of the Code which directly relates to its activities.

B. Publication in the Federal Register of Interpretations of General Applicability and Statements of General Policy

3. With regard to the publication of interpretations and statements of general policy, we agree that more publication is needed and the statements should be placed in the Rules and Regulations section of the Federal Register so they may become part of the Code. However, some uniformity is needed as to whether these statements should go into an appendix or immediately after the regulations being interpreted. We recommend that interpretations be placed immediately after the regulations and policy statements be placed in an appendix or separate section of the Code. Additionally, agencies publishing interpretations and statements of policy should be required to state their understanding of the legal status of the interpretations and statements and should immediately publish any changes of an interpretation or policy.

C. Standards for Publication in The Federal Register of Notices On Adjudicatory Matters

1. We agree that the entire text of agency orders and opinions should not be published if there is no further opportunity to comment. We endorse the suggested method of notifying the public where and how decisions and opinions can be obtained

and law they are inferred. Except in very limited circumstances, we do not believe it is practical to accept statements of general applicability of an agency made in an adjudicatory opinion. Adjudicatory opinions are, by their nature, limited to the facts presented, and lawyers have argued, will continue to argue and should be allowed to argue the extent of the general applicability of an adjudicatory opinion as it suits their client.

2. We think it is advisable to initially publish notices of applications, hearings and other adjudicatory matters so that public participation may be encouraged. However, once a proceeding has begun, we do not think it is necessary to publish subsequent announcements of limited interest.

3. Our comment on paragraph 2 above is somewhat applicable.

D. Format for Publication in The Federal Register of Notices On Adjudicatory Matters

We agree with recommendations one, two and three of this section.

Sincerely,

Michael A. Brown
General Counsel