

POSITIVE LAW CODIFICATION

IN THE

UNITED STATES CODE

The Office of the Law Revision Counsel is required by law to engage in a comprehensive ongoing program, known as **positive law codification**, under which all general and permanent Federal statutory law is to be revised and restated.¹

This brochure explains the process of positive law codification and provides related information concerning the Office of the Law Revision Counsel and the United States Code.

QUICK SUMMARY

Positive law codification:

- Restates existing law - nothing new
- Enacts existing law as a "positive law" title
- Improves organization
- Removes obsolete provisions
- Corrects technical errors

¹Under section 205(c)(1) of House Resolution No. 988, 93d Congress, as enacted into law by Public Law 93-554 (2 U.S.C. 285b(1)), the Office of the Law Revision Counsel of the United States House of Representatives is required "[t]o prepare, and submit to the Committee on the Judiciary one title at a time, a complete compilation, restatement, and revision of the general and permanent laws of the United States which conforms to the understood policy, intent, and purpose of the Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections both of substance and of form, separately stated, with a view to the enactment of each title as positive law."

Positive law codification

Positive law codification is the process of preparing and enacting a restatement of existing law. The restatement conforms to the policy, intent, and purpose of Congress in the original enactments, but the organizational structure of the law is improved, obsolete provisions are eliminated, and technical errors are corrected. The restatement is enacted as a **positive law title** (see below) of the United States Code.

United States Code

The United States Code is the official codification of Federal statutory law.

Positive law titles

The United States Code is divided into subject matter titles. Some are "positive law" titles and some are "non-positive law" titles. The difference is this:

A **positive law title** of the United States Code is - itself - a Federal statute.

A **non-positive law title** of the United States Code is an editorial compilation of Federal statutes.

<p>positive law title a Federal statute</p> <p>non-positive law title an editorial compilation of Federal statutes</p>
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For example, title 10, United States Code, "Armed Forces", is a positive law title because the title, *per se*, has been explicitly enacted.

Alternatively, title 42, United States Code, "The Public Health and Welfare", is a non-positive law title. The Federal statutes set out editorially in title 42 have been explicitly enacted, but title 42, *per se*, has not.

Provisions set out in non-positive law titles of the United States Code may vary slightly from the precise language enacted into law; cross references are adapted and stylistic changes are made in order to facilitate the integration of Federal statutory provisions into the United States Code. By contrast, a positive law title of the United States Code constitutes the precise statutory language enacted into law.

The distinction between positive law titles and non-positive law titles can have legal and practical ramifications. See [Benefits of Positive Law Codification](#) (last page of this brochure).

Ultimately, all titles of the United States Code will be positive law titles. At present, about half are positive law titles.

Office of the Law Revision Counsel

The Office of the Law Revision Counsel is an independent office in the United States House of Representatives. Among other duties, the Office of the Law Revision Counsel is required to prepare positive law codification bills to be transmitted to the Committee on the Judiciary of the House of Representatives. The Office of the Law Revision Counsel is non-political, being required by law to maintain impartiality as to issues of legislative policy. In general, the function of the Office of the Law Revision Counsel is to maintain and improve the United States Code, which is the official codification of Federal statutory law.

Review and comment

As a positive law codification bill is prepared, the Office of the Law Revision Counsel actively seeks input from Federal agencies, congressional committees, and others with expertise in the area of law being codified. Close review and rigorous analysis are welcomed, so that all interested parties are assured that the restatement of law is accurate and comprehensive. A formal review and comment period begins once the bill is introduced, but from the very outset of the drafting process the Office of the Law Revision Counsel actively seeks feedback.

Legislative procedure

The Office of the Law Revision Counsel prepares an initial draft of a bill to restate existing law as a positive law title of the United States Code. The bill is introduced in the House of Representatives by the Chairman of the Committee on the Judiciary. The Committee on the Judiciary has jurisdiction of codification legislation. After introduction of the bill, an extensive review and comment period ensues. The Office of the Law Revision Counsel actively seeks input from Federal agencies, congressional committees, and others with expertise in the area of law being codified. At the conclusion of the comment period, an amendment in the nature of a substitute – reflecting corrections and comments – is prepared by the Office of the Law Revision Counsel and transmitted to the Committee on the Judiciary for Committee action. Typically, the bill is passed by the House under suspension of the rules and in the Senate by unanimous consent.

Benefits of Positive Law Codification

The process of positive law codification yields a number of benefits for the courts, Congress, Federal agencies, the private bar, and all who use or refer to Federal statutory law.

Legal evidence.--Provisions set out in non-positive law titles of the United States Code are merely prima facie evidence of the actual law. However, once those provisions are enacted as a positive law title of the United States Code, the provisions, as set out in the Code, constitute legal evidence of the law in all Federal and State courts.

Improved organization.--Provisions that are closely related by subject may be scattered in different places in the United States Code. Such provisions may have been enacted many years apart and incorporated into the United States Code at different times. Positive law codification affords an opportunity to revisit the organizational structure of statutory material. Thoughtful regrouping of provisions often yields a statutory product that is easier to use and that fosters a more comprehensive understanding of the law.

Elimination of obsolete provisions.--Obsolete provisions are frequently identified in the course of preparing a positive law codification bill. For example, existing law often contains provisions related to reports that were required and submitted many decades in the past. Obsolete provisions are eliminated from the law after appropriate vetting of proposed changes. Although such changes seem small and innocuous when viewed individually, the cumulative effect of removing all obsolete provisions can be profound, resulting in a much more compact and comprehensible text.

Improved wording and form.--Some provisions - particularly provisions enacted many years ago - use archaic "legalese" that obscures the meaning of the text. Positive law codification provides an opportunity to update wording to achieve a more consistent and readable style. Even when no words are changed, improvements in form may make the text more understandable. For example, an overlong and complex provision may be broken down into labeled parts to aid the reader in following the text and focusing on relevant material. In all cases, great care is taken to ensure that the restatement of existing law conforms to the policy, intent, and purpose of Congress in the original enactments.

Correction of technical errors.--Positive law codification provides an opportunity to correct technical errors in the law, including typographical errors, misspellings, and punctuation and grammar problems.

Precise statutory text.--The process of positive law codification promotes public access to the precise text of Federal statutory law. Provisions set out in non-positive law titles of the United States Code may vary slightly from the precise language enacted into law; cross references are adapted and stylistic changes are made in order to facilitate the integration of Federal statutory provisions into the United States Code. By contrast, a positive law title of the United States Code constitutes the precise statutory language enacted into law.

Cleaner amendments.--Positive law codification promotes accuracy and efficiency in the preparation of amendments. A positive law title of the United States Code constitutes the precise statutory language enacted into law. Specifying words to be struck or the place where new words are to be inserted is simplified. Understanding the impact of proposed amendments is easier. Drafting errors are reduced. In addition, compliance with congressional rules requiring comparative prints (showing proposed omissions and insertions) is facilitated.

Streamlined citations.--Statutory citations in court documents, legal academic papers, and other legal work are streamlined as a result of positive law codification. A reference to a provision in a non-positive law title of the United States Code may require a long citation including the section number, the short title of the Act, the Public Law number, and the Statutes at Large citation - all in addition to the United States Code citation. However, once the provision is enacted as a part of a positive law title, the United States Code citation becomes the complete citation.