

A Research Guide to the Federal Register and the Code of Federal Regulations

Part of [LLSDC's Legislative Sourcebook](#)

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Historical Development of the Federal Register

In earlier times U.S. Executive branch agencies and the Office of the President would each publish their own regulations in various separate publications, be they gazettes, bulletins, rulings, digests, pamphlets, notices, codes, certificates, orders, and the like. This profusion of authoritative documents, especially as agency regulations began to mushroom in the 1930's, made it extremely difficult for the public to determine where a U.S. regulation could be found, when it was issued and whether it had been altered or revoked.¹ The U.S. Department of Justice itself had a difficult time determining the status of regulations as became embarrassingly apparent when the Department had to acknowledge before the Supreme Court that an Executive order it was trying to enforce had been inadvertently revoked.² To remedy this situation Congress, in 1935, passed the Federal Register Act, which empowered the Archivist of the United States to establish a division within the National Archives to be responsible, with the Government Publishing Office, for the publication of a daily *Federal Register* under the authority of a newly established Administrative Committee of the Federal Register.³

The Federal Register Act requires that the *Federal Register*, begun on March 14, 1936, be the Federal government's comprehensive vehicle for publishing all agency promulgated rules and regulations as well as all Presidential proclamations and executive orders or other such documents that the President determines has general applicability and legal effect or as may be required by Act of Congress. Other documents, such as notices of meetings, agency collection activities, applications, and policy statements may be included as well. However, the law does not permit the publication of comments or news items in the *Federal Register*.⁴ After the enactment of the Administrative Procedures Act in 1946, notices of proposed rulemaking are now also required to be published.⁵ The proposed rules are to be accompanied by a description of the subject and issues involved and from 1947 to 1972 these descriptions in the preamble to the proposed rules were about the only place to find an explanation or rationale for a rule.

Beginning in the 1960s finalized rules began to be accompanied in the *Federal Register* by brief explanations, usually just after the text of the rule, but it was not until 1973 that final rules were required by the Administrative Committee of the Federal Register to have in their preamble to the rule a statement summarizing the general subject matter of the rule.⁶ A rule effective on April 1, 1977, requires that comments to proposed rules and answers to them be summarized in the preamble before the rule and it also requires that agencies submit their final and proposed rules with specific preamble heading material.⁷ The preamble information published in the *Federal Register* to a proposed or final rule is the primary published source for its “regulatory history” and one of the few means to determine “regulatory intent.”

Historical Development of the Code of Federal Regulations

The Federal Register Act originally provided, within six months, for a complete compilation of all existing regulations promulgated prior to the first publication of the *Federal Register*. However, this was deemed inefficient, and so instead of a “compilation” of existing regulations, the Federal Register Act was amended in 1937 to provide a “codification” of all regulations every five years.⁸ A six member Codification Board was established which determined the precise structure of the new Code of Federal Regulations (CFR). A similar organization to the United States Code (USC) was followed by the Board so that a majority of the 50 titles to the CFR (some held in reserve) have similar alphabetically arranged subject categories and title numbers to that of the 50 titles in the USC.⁹

The first edition of the CFR was published in 1938 and included all finalized regulations that were published in the *Federal Register* from March 14, 1936 to June 1, 1938, as well as those agency regulations deposited with the Archivist, and still in effect, that may have been published by the agencies before March 14, 1936. Source notes in the first edition of the CFR are to pages in the rebound edition (1936-1938) of the *Federal Register*, not to the original pages in the daily edition.

Supplements to the first edition of the CFR were published for the period beginning on June 1, 1938, to the end of 1938 (in 1 vol.), and for the years 1939 (in 2 vols.), 1940 (in 4 vols.), and 1941 (in 4 vols.). Due to the war effort there was no 1942 supplement and the new CFR edition that was suppose to come out in 1943 was instead replaced with a cumulative supplement (in 10 vols.) that covered regulations still in force and published in the *Federal Register* from June 1, 1938 to June 1, 1943. Thus this publication was an adjunct to the original 1938 edition, not a replacement. Supplements were again published for the period to the end of 1943 (in 2 vols.), for 1944 (in 3 vols.), for 1945 (in 4 vols.), for 1946 (in 6 vols.) and for 1947 (in 5 vols.). A supplement was not published for 1948, “because preparations were being made for the second edition of the CFR to replace the 1938 codification and the 1943 update.”¹⁰

In 1949, the second edition of the *Code of Federal Regulations* was finally published. It included all the regulations still in effect as of January 1, 1949, and was

largely taken from the 1938 edition, the supplements, and the regulations issued in the *Federal Register* in 1948. However, there were some additional regulations added that were not published in the *Federal Register*. These were generally either rules of procedure or rules received by the Division of the Federal Register and considered as officially promulgated and applicable to the general public or a class of the public and effective on or after January 1, 1949.¹¹ Each book of the 1949 CFR, containing one or more titles, also had a subject index and a place at the back to fit a cumulative pocket supplement. Cumulative pocket supplements were issued annually for a changing selection of books (see HeinOnline collection list) until it was deemed appropriate that a new edition of a particular book should be published with space in the back for subsequent pocket supplements. Each supplement also contained various finding aids, including a “Codification Guide” or “List of Sections Affected” as it was later called.

After considerable discussion on the best way to proceed, beginning in 1963 for some titles and for all titles in 1967, the Office of the Federal Register (OFR)¹² began publishing yearly revisions to the titles of the CFR, effective on January 1 of each year. The new books were bound in soft covered, dark blue paper stock, but beginning in 1970 each annual edition of the CFR has a different color on its outside binding. If there are no changes to regulations in certain books then a colored paper stock is issued so it can be used to cover the older edition. Although ponderous in size, an annual republication of the CFR in softbound books, instead of a through cumulative supplements or loose-leaves allows the researcher to determine how a regulation read on any given date.

Soon, however, it became apparent to the OFR that revising the entire Code of Federal Regulations, at the same time, was administratively unmanageable. So beginning on October 1, 1972, the OFR has divided the titles of the CFR into four groups with each group being revised in staggered quarters of the year. Titles 1-16 are revised effectively on January 1 of each year. Titles 17-27 are revised effectively on April 1 of each year. Titles 28-41 are revised effectively on July 1 of each year, and titles 42-50 are revised effectively on October 1 of each year.¹³

Contents and Organization of the Federal Register and CFR

The daily *Federal Register* is generally divided into three large sections consisting of “Rules and Regulations”, “Proposed Rules”, and “Notices”. These three groups are sandwiched between a title page and table of contents in the front (with pages numbered in uppercase Roman numerals) and certain reader aids in the back (with pages numbered as lower case Roman numerals). Frequently, major proposed and final rules, are published with their own title page and published as various parts (starting at Part II) in the back of an issue after the “Notices” section. Presidential proclamations and Executive orders are generally published just before the “Rules and Regulations” section unless a Presidential Documents section is assigned its own part in which case it will be published in the back, just before the “Reader Aids” section. It is to be noted that the title page, table of contents pages and other matter presented in the *Federal Register* has had a varied history.¹⁴

Since 1977 preambles to final and proposed rules have been required to contain certain headings and related material including the name of the agency, a brief line on the action being taken, a summary of the rule, the effective date of the rule (or date when comments are due), contact information, and supplementary information.¹⁵ The supplementary information frequently provides a discussion of the background and need for the regulation, and in case of a final rule how it differs from the proposed rule as well as responses to comments made on the proposed rule.

Unless there are certain problems with a document, it is generally published three working days after it is received by the OFR,¹⁶ which is normally about a week to ten days after the agency releases the rule (the approval date may be even earlier). You can usually find a newly approved regulation on an agency's public Web site before it is published in the *Federal Register*. However, the effective date of a rule, which is required, with some exceptions, to be not less than 30 days after publication, is generally based on when it is published in the *Federal Register*.¹⁷

The Administrative Procedure Act, as amended by the Freedom of Information Act, requires that certain documents be published in the *Federal Register*.¹⁸ These include substantive rules and interpretations of general applicability, statements of general policy, rules of practice and procedure, descriptions of agency forms, rules of organization, descriptions of an agency's central and field organization, and amendments or revisions to the foregoing.¹⁹ Matters of national secrecy or those relating to an agency's internal management have always been exempted from publication.²⁰ The Administrative Procedure Act also requires notice of proposed rulemaking to be published in the *Federal Register* with the exception of 1) a substantive rule which grants or recognizes an exemption or relieves a restriction; 2) interpretive rules and statements of policy; or 3) as otherwise provided by the agency for good cause found and published with the rule.²¹

To assist Federal agencies in preparing documents to be published in the *Federal Register* the OFR has published a *Document Drafting Handbook*. The Handbook makes no distinctions between the word "rule" from the word "regulation", but, pursuant to the Administrative Procedure Act, it does make a clear distinction between a final rule and a proposed rule and also attempts to clarify the kinds of documents that are considered rules and regulations, proposed rules, and notices.²² The *Handbook* also allows for the publication of interim or temporary rules that are effective immediately for a short period or for a definable period of time with comments solicited for later consideration.²³ Because U.S. courts generally defer to Federal agency rules that have gone through notice-and-comment rulemaking requirements, it makes a difference in the authority of an interim rule, policy statement, or interpretation, if they have not gone through such a process.²⁴

Unlike the *Federal Register*, the *Code of Federal Regulations* does not contain preambles, proposed rules, notices, or even general policy statements. It contains just the finalized and effective rules of Federal agencies as well as any related official

interpretations or supplements to those rules. These rules are organized by subject matter into CFR titles, chapters, parts, and sections. Generally an agency's rules are all placed under one title or chapter. However, unlike most of the United States Code, sections or parts of the CFR that have been rescinded are frequently reused as a publishing vehicle for new unrelated regulations. CFR titles are published annually according to a staggered schedule (see above) and finalized rules in the *Federal Register* update the annual rules published in the CFR.

Title 3 of the CFR contains all the Presidential proclamations and Executive orders issued that year and as such, it is not updated like agency rules. Libraries are wise to retain this Title indefinitely. A one volume Codification of Presidential Proclamations and Executive Orders was last issued in 1990 and covered the period 1945-1989. The OFR on its Web site now maintains a searchable electronic version of the 1990 publication with indices and links to executive orders and proclamations, as well as an online disposition table for all executive orders issued from 1937 to the present.²⁵ Beginning with Clinton Administration the Executive orders on the later site are also available in full text.

Electronic Sources for the Federal Register and CFR

There are a number of electronic sources to the *Federal Register* and the CFR. For instance, FDsys.gov (Federal Digital System), the official online document repository for the U.S. Government Publishing Office, is fully browseable, searchable, navigable by citation, and maintains the *Federal Register* from 1994 forward with authenticated portable document format (PDF) copies from 1995 forward. It also has annual, searchable, and citation navigable CFR issues with PDF copies from 1997 forward. In addition, there is FederalRegister.gov which contains the same information with easy to navigate advance search capabilities which can filter by agency, type of document and other features. Search results on FederalRegister.gov also link to *Federal Register* documents on [FDsys](http://FDsys.gov). The *Register* is now also available on in Beta on GovInfo.gov, which is the replacement platform to [FDsys](http://FDsys.gov).

Historically, the William S. Hein & Co., Inc., has optically scanned all issues of the *Federal Register* (within one day of the present) placing them on its HeinOnline service.²⁶ The service has browse capability, citation retrieval capability, and even word search capability of the unedited optically scanned text. It also has the annual *Federal Register Index* and the *List of CFR Sections Affected*. In addition, the site has nearly all past editions of the *Code of Federal Regulations*. Through an arrangement with the Law Library of Congress, Hein has made its early [Federal Register \(1936-1993\)](#) and [CFR \(1938-1997\)](#) databases available for free on the Internet, but with only browsing, printing, and downloading capabilities.

Lexis and Westlaw also have the *Federal Register* in PDF searchable format from 1936 through 1980 and with boolean searchable formats of the *Federal Register* from July 1 of 1980 to the present. Lexis has the Code of Federal Regulations editions back to

1981 and WestlawNext has them back to 1984. They both have citation retrieval capability for sections in the current CFR.

Other commercial services that have the *Federal Register* and CFR include Bloomberg Law (from 1937), CQ.com (from 1990), as well as others beginning with varying years including Regscan, CyberFeds, LoisLaw, and DSCS.

Besides FDSys and FederalRegister.gov, the Federal government has a number of electronic products on federal regulations. For instance, there is GSA's Regulations.gov. The site tries to encourage electronic comments on proposed regulations from ordinary citizens by presenting a simple way to search, link and submit and view comments to agency proposed regulations that are still open for comment.

GPO also maintains an up-to-date "Electronic Code of Federal Regulations ([e-CFR](#))" service which presents CFR sections in their current form with any recent amendments from the *Federal Register* already incorporated.²⁷ The e-CFR service is updated daily and also allows you to separately view appendices and supplements to CFR parts, instead of having them tacked together onto the concluding final section of a part of the CFR. Other similar electronic CFR updating services include LexisNexis, WestlawNext, BloombergLaw, TheLawNet.net, and VersusLaw.net. Portions of the CFR are also available from other commercial vendors in selected subject areas.

Finally, the National Archives, through its Office of the Federal Register, maintains a Web site on the *Federal Register* and CFR with a number of helpful publications, some on Executive Orders and Presidential proclamations (noted above) and a "Public Inspection List" of documents to be published in the next day's *Federal Register*.

Finding Tangible Copies of the Federal Register and CFR

The *Federal Register* has been published daily each federal working day²⁸ since 1936 on newspaper quality paper. Only the earliest issues, from March 14, 1936 to June 1, 1938, were republished on better quality paper and repaginated in a bound form much like the bound form of the *Congressional Record*. However, only a few libraries hold the entire *Federal Register* set in paper form anymore and continue to bind the daily editions like other periodicals,²⁹ but most have discarded their paper copies in favor of microform or electronic online copies. The annual *Federal Register Index*, is generally retained by libraries having microform copies. Federal depository libraries, academic law libraries, and Federal agency libraries are all possible sources for finding older, tangible issues of the *Federal Register* and the *Code of Federal Regulations*, but they may not have complete paper sets. Searching for the titles on OCLC may help you locate libraries that have the years and titles that you are interested in obtaining and HeinOnline has a near complete historical CFR collection.

The William S. Hein & Co., Inc. also sells microfiche copies of the *Federal Register* from 1936 to the present. With the Hein subscription comes a hard copy of the annual *Federal Register Index* (albeit somewhat reduced in size).

Citations, ID Numbers, and the Unified Agenda

In its own documents, the Office of the Federal Register (OFR) cites to the *Federal Register* by employing the volume number, the publication abbreviation “FR”, and the beginning page number on which the document or the regulation within the document begins, as well as the date of publication. An example would be “67 FR 49264, July 30, 2002.” *The Bluebook*³⁰ uses more detail, including the name of the regulation, the volume number, the abbreviation “Fed. Reg.”, as well as the publication date and where the document is to be codified, as in “Importation of Fruits and Vegetables, 60 Fed. Reg. 50,379 (Sept. 29., 1995) (to be codified at 7 C.F.R. pt. 300).” You can obtain a document by citation method on either Lexis or WestlawNext by simply using an FR cite method without reference to a date or codified cite as in “67 FR 49264.” HeinOnline also has a navigation tool for cite retrieval.

Citations to the *Code of Federal Regulations* in the *Federal Register* are cited with the title number, the abbreviation CFR, the word “part” or the symbol “§” for section, and the number of the part or section, as in “12 CFR part 220” or “12 CFR §220.1.” *The Bluebook* citation method is similar to the above, but it requires you to use periods in “C.F.R.” and the issue year of the C.F.R. title as well, as in 12 C.F.R. pt. 220 (2014). By just using a simple CFR part or section citation, a current (or near current) CFR document can be obtained on WestlawNext and Lexis as in “12 CFR 220.1.” CFR titles have chapters corresponding to different agencies or bureaus. For instance, 12 C.F.R. Ch. II corresponds to regulations published by the Federal Reserve Board. Material below a CFR section is referred to as a paragraph or paragraphs, as in 12 CFR 220.1(b)(2).

Although 44 USC §1510(e) states that the documents in the CFR are only “prima facie evidence” of the text of the documents in the *Federal Register*, courts regularly accept CFR cites without reference to FR citations from which a rule was taken. Indeed, according to 44 USC §1507 documents in the *Federal Register* themselves have only a “rebuttable presumption” that they are duly issued, prescribed and promulgated and are true copies of the originals approved by a regulatory agency. But it does not appear that discrepancies between the original documents, the *Federal Register* documents, and CFR documents have ever been litigated. In part, this may be because Federal regulatory agencies can and regularly do make technical corrections to their regulations published in the *Federal Register*. However, the Office of the Federal Register will not certify the accuracy of a particular regulation in the CFR and thus for safety sake, it “may” be advisable for litigants to note the FR citation history to sections in the CFR pertinent to the litigation. This may be especially important if there is a question about the regulation because only the documents published in the *Federal Register*, and not the CFR, is there any accompanying explanation to a proposed or finalized rule. In some sections of the

CFR it may be hard to trace its FR citation history and you may need to perform an online search (such as the advance search option on FederalRegister.gov) or search the annual index or *List of CFR Sections Affected* (see below).

Besides citations, there are several identification numbers to *Federal Register* documents. These include the agency docket number found at the beginning of the regulation (the same number is used for the proposed and final rule) or the *Federal Register* document number found at the end of the regulation (unique for each document published, including notices). The Web version of the *Federal Register* on FDSys uses the unique FR Document number in its URLs along with the publication date.

Another identification number to some regulations is the RIN or regulation identification number found at the top of the document right underneath the agency docket number. RIN numbers are assigned to descriptions/status reports of agency regulations under development and are published twice a year in the *Federal Register* pursuant to the 1980 Regulatory Flexibility Act and Executive Order 12866. In the past this material was gathered in a GPO publication entitled as the *Unified Agenda* and available now on GPO's FDsys database as well as on RegInfo.gov, a website of the Office of Management and Budget.

Indexing to the Federal Register and CFR

Since its inception in 1936, the *Federal Register* has always been accompanied by an annual *Federal Register Index*.³¹ The Index is organized by agency (or subsidiary agency) and then within the agency index there are three groups -- rules and regulations, proposed rules, and notices, which is then broken down into alphabetically arranged subjects. Within the main index are scattered subjects referring you to the appropriate agency or agencies dealing with those particular subjects. Cites in the Index are to page numbers only, but in the back of the publication there is table with corresponding dates. A cumulative monthly issue is also published, with the final January-December issue of each year becoming the annual index. Readers must be cautious in assuming that the annual index for a particular agency is complete. From 1984-1998 the Congressional Information Service also published a more detailed semi-annual index, the *CIS Federal Register Index*, which some libraries continue to hold on their collection. Online searching, such as the advanced document search on FederalRegister.gov, is often a better substitute for the Index.

The Office of the Federal Register also prepares and publishes an annual *CFR Index and Finding Aids*. The "Index" portion of the publication is organized by detailed subjects with references to CFR parts. The "Findings Aids" portion is divided into four sections including the following titles: "List of Agency-Prepared Indexes Appearing in Individual CFR Volumes;" "Parallel Table of Authorities and Rules;" "List of CFR Titles, Chapters, Subchapters, and Parts;" and "Alphabetical List of Agencies Appearing in the CFR." Particularly helpful is the parallel authorities section, which provides CFR cites to regulations from various legal authorities that are organized by U.S.C. section,

U.S. statute page number, Presidential proclamation number, and Executive order number. From 1949 to 1963 a specialized index was published in the back of each book of the CFR, which sometimes covered one or multiple titles of the CFR, and since 1975 a few agencies (see list in the Index) have prepared an agency index that is published along with their regulations in the CFR.

The *Index and Finding Aids* is also reproduced annually as part of the *United States Code Service: Lawyer's Edition* published by LexisNexis and a more detailed quarterly index, the *Index to the Code of Federal Regulations* was formerly published by LexisNexis.³²

Another related index is *Shepard's Code of Federal Regulations Citations*. Published by LexisNexis and organized by CFR section, it includes citations to judicial interpretations and treatments of regulations in federal courts since about 1949. It also cites to state court decisions and law reviews since 1977 and provides related cites to ALR annotations as well. Reference notes to sections in both the *United States Code Service* and the *United States Code Annotated* also cite to related CFR sections. However, it is important to note that authorities cited in sections of the CFR itself are often to broad policies and laws that may or may not appear in any index or reference note.

List of CFR Sections Affected

Finally, no article on the *Federal Register* and CFR would be complete without making reference to the *List of CFR Sections Affected* (LSA).³³ Begun in 1950 by being placed in the cumulative pocket supplements to the 1949 edition of the CFR, the LSA is organized by CFR title and part and contains page references to the annual *Federal Register* volumes that publish changes to final and proposed rules in the CFR. The changes referenced include final and proposed amendments, revocations, or newly established regulations published in the *Federal Register*. The LSA makes it easier for researchers to track the development and ascertain the currentness of particular regulations. This kind of regulatory history tracking is more difficult for early documents published in the *Federal Register* before 1949, as those did not note what were the corresponding CFR citations. Before 1964 LSA was simply called List of Sections Affected and contained little information on how a CFR was affected. Since 1964 LSA has provided section-by-section information on how CFR parts were affected. However, LSA provides minimal details on proposed rules (and IRS final rules), and just notes that a certain part is affected.

Beginning in 1963, monthly and annual issues of the LSA were published instead of being inserted into cumulative pocket supplements. The cumulative January-December issue of the LSA would then be designated as the annual issue for the volume. In 1972 the titles of the CFR began to be published with staggered effective dates and after that time certain monthly issues of the LSA would be designated as the annual issue for certain titles of the CFR (December issue for Titles 1-16, March issue for Titles 17-27,

June issue for Titles 28-41, and September issue for Titles 42-50). Subscribers are instructed to save the four annual LSA issues and sometimes other months as well.

Four compilations of the LSA have been published by the Government Publishing Office encompassing the years 1949 to 1963, 1964 to 1972 (2 vols.), 1973 to 1985 (4 vols.), and 1986 to 2000 (4 vols). The volumes are organized by CFR title and then by year within each title. Only finalized rules to CFR sections are included, which note the actions taken and the corresponding page numbers in the *Federal Register*. The 1986-2000 LSA compilation is available electronically on [FDSys](#).

LSA is also available on FDSys from 1997 to the present.³⁴ Some libraries may continue to retain all four of the LSAs that complete a year's cumulative listings. Other libraries now rely on the multi-volume LSA as well as the LSA on FDSys, the annual *Federal Register Index*, and electronic searching of the *Federal Register*.

In the "Readers Aids" section of each issue of the daily *Federal Register* there is a cumulative list of CFR parts affected that month. A current cumulative list for the month can be found in the most recent issue of the *Federal Register* and earlier monthly cumulative lists can be found on the last day of the month that a *Federal Register* was issued. Thus it is possible to determine the currentness of a CFR part by reviewing the annual CFR together with the most recent monthly LSA supplemented by the most recent *Federal Register*.

A final caution in conducting research using the LSA is to note that parts to the CFR which have been rescinded by a Federal agency may be reused by an agency at a latter time for any newly established regulation on a totally different subject matter. Also, certain CFR titles have been reassigned or removed, including titles 2, 6, 10, 11, 34, 40, 44, and 48.

Concluding Statement

Although not perfect, the *Federal Register* and the CFR appear to have met their original purpose of providing the public with a comprehensive publication vehicle for all the regulations issued by Federal agencies and the President. The *Federal Register*, faithfully prepared and published every workday since 193628, and the annual *Code of Federal Regulations* which it supplements, are considered to be the core documents of the Executive Branch of the U.S. Government, and as such have become indispensable to the Government's operations and to its communication to the public which it serves.

NOTES:

- ¹ See generally Griswold, E.N. Government in ignorance of the law; a plea for better publication of executive legislation. 48 Harv. L. Rev. 198-215 (1934). Article available on [HeinOnline](#).
- ² Panama Refining Co. v. Ryan, [293 U.S. 388](#) (1935). For history of the *Federal Register* and the Office that produces it see "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."
- ³ Act of July 26, 1935; [ch. 417](#), 49 Stat. 500-503, (current version at [44 U.S.C. §§ 1501- 1511](#)). See also a [legislative history](#) to the 1935 Federal Register Act
- ⁴ [44 U.S.C. §1505](#).
- ⁵ Act of June 11, 1946, ch. 324, §4, 60 Stat. 237, 239 (current version at [5 U.S.C. § 553](#)).
- ⁶ 37 Fed. Reg. 23602 (Nov. 4, 1972) (codified at [1 C.F.R. pts. 1-22](#)).
- ⁷ 41 Fed. Reg. 56624 (Dec. 29, 1976) (codified at 1 C.F.R. §18.12). The actual comment letters themselves may be available on an agency age Web site or at the agency reading room or FOIA office. There is no requirement that comment letters be kept indefinitely and agency policy may dictate their discard after a number of years.
- ⁸ Act of June 19, 1937, ch. 369, [50 Stat. 304-305](#).
- ⁹ Similar subject categories and title numbers between the [CFR](#) and the [USC](#) include titles 1, 3, 5, 7, 8, 12, 15, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 33, 38, 39, 41, 42, 43, 46, 47, and 49.
- ¹⁰ Jablonski, Sandra. [The Federal Register and the Code of Federal Regulations](#), p. 1. Draft paper prepared for an LLSDC Legislative Research Special Interest Section presentation on February 29, 1996.
- ¹¹ *Id.*, p. 2.
- ¹² The Division of the Federal Register was renamed the Office of the Federal Register on February 6, 1959.
- ¹³ For past discussions on the proper way to publish the CFR see Factor, Modernizing federal regulations publications, 21 Fed. B. J. 219 (1961); Eberhart, A modern approach to making federal regulations available, 22 Fed. B. J. 32 (1962); and Federal register and the Code of federal regulations - a reappraisal, 80 Harv. L. Rev. 439 (1966). Articles available on HeinOnline.
- ¹⁴ 14. The *Federal Register* began with a two column format and it wasn't until the June 4, 1938 issue that it began its familiar three column format while presenting at that time its first "table of contents" which appeared on the third column of the first page and any needed subsequent columns on the second page. This continued until the February 16, 1960 issue when the table of contents began appearing in the first column on the first page. With the January 1, 1965 issue the series began having its own "title page and from March 12, 1965 to April 30, 1971 on the title page there is in small print a list of agencies appearing in each issue. However, beginning with May 1, 1971 issue on the title page the words "Federal Register" began appearing sideways in large print near the left side on issue of the title page and this continued until the January 7, 2011 issue. In addition, from May 1, 1971 to February 19, 1982 a "highlights of this issue" section begins on the title page preceding the daily table of contents section and beginning with the May 17, 1982 issue to the May 31, 1986 issue there is a "selected subjects" with agency names that begins on the

title page. From the June 2, 1986 to the issue of the *Federal Register* to the current issue there is presented in the *Register* a cover page that is white cover sheet made of card stock that encases each issue and it reproduces the title page with the title "Federal Register" as well as the day, date, volume number, issue number and pages covered for that issue. This information is also placed on the spine if there is room (except the pages covered). Currently following the cover page, there is a title page, followed by a Federal Register information page, followed by a table of contents section, followed by a section on "CFR Parts Affected in this Issue," followed by a "Rules and Regulations section, followed by a "Proposed Rules section, followed by a "Notices" section, followed by individual regulations or Presidential documents with their own title pages. Sometimes Presidential documents are presented before "Rules and Regulations" section. Finally at the end of the *Federal Register* there is a "Reader Aids" section which includes customer service and electronic information, pages covered during the month, CFR parts affected during the month, a list of rules going into effect during the month, a list of comments due during the next week, a list of new public laws, and a notice on how to receive information about new public laws electronically. A good overview of the *Federal Register* can be found in the OFR publication, [The Federal Register: What it Is and How to Use It](#) as well as [Federal Register 101](#) by Amy Bunk and the [Tutorial, History, and Statistics](#) found on [FederalRegister.gov](#).

¹⁵ 1 C.F.R. §18.2.

¹⁶ See publishing schedule at 1 C.F.R. §17.2.

¹⁷ 5 U.S.C. §553(d) and 1 C.F.R. §18.17.

¹⁸ The Administrative Procedure Act (1946) was amended by the Freedom of Information Act (FOIA, Pub. L. No. 89-487, July 4, 1966, 80 Stat. 250) with an effective date of July 4, 1967. However, on September 6, 1966, Title 5 of the U.S. Code was codified into positive law by Pub. L. No. 89-554 without the FOIA amendments. Consequently on June 5, 1967 Pub. L. No. 90-23 was enacted to codify the Freedom of Information Act as section 552 of Title 5 of the U.S. Code. Note that unlike some codifications, which utilize unused sections of the U.S. Code, sections 501-559 of Title 5, which was assigned to the Administrative Procedure Act, had been assigned to unrelated subjects before the Title was codified into positive law.

¹⁹ [5 U.S.C. § 552\(a\)\(1\)](#).

²⁰ [5 U.S.C. § 552\(b\)\(1\)](#) & (2). Between 1965 and 1988 secret federal regulations, known as the Code of Emergency Federal Regulations, were promulgated to be triggered automatically in the event of a national emergency. These regulations are available by written request to the Office of the Federal Register. They are also available from the William S. Hein Co. (<http://www.wshein.com>).

²¹ [5 U.S.C. § 553\(b\)](#).

²² Office of the Federal Register, Document Drafting Handbook, Oct. 1998 revision. See particularly sections 1.1, 2.1, and 3.1.

²³ *Id.*, sec. 2.1.

²⁴ For discussion of these issues see the Spring 2002 (v. 54, No. 2) issue of *Administrative Law Review*; particularly noteworthy is the article by William Funk, When is a "rule" a regulation? Marking a clear line between nonlegislative rules and legislative rules, [54 Admin. L. Rev. 659-671](#) (2002) ([abstract](#)).

²⁵ See [Codification of Presidential Proclamations and Executive Orders](#) (1945-1989) and [Executive Orders Disposition Tables Index](#) (1937 to Present).

²⁶ See <http://www.ecfr.gov>.

²⁷ HeinOnLine (<http://www.HeinOnLine.org/>) has available the Federal Register from 1936 through a near current issue.

²⁸ From 1936 through 1972 publication of the Federal Register occurred on the day after it was prepared, including Saturdays, but not Sundays and Mondays or the day after federal holidays. Since 1973 publication has occurred Mondays through Fridays, but not on holidays. The pages in the annual volumes have gradually increased from some 3,000 pages in the 1930's to some 75,000 pages today (see [Federal Register Pages Published Annually](#)).

²⁹ Libraries with a complete set and known by the author to bind the paper edition of the Federal Register include Office of the Federal Register Library, the Department of Interior Library, and the Law Library of Congress.

³⁰ The Bluebook: a uniform system of citation, nineteenth edition, 2010, p. 133, Harvard Law Review Association.

³¹ Volume 3 (1938) of the Federal Register Index was in two parts (Jan. - June & July - Dec.); volumes 13 (1948), 40 (1975), and 41 (1976) came in four parts; and volume 11 (1946) indicates that Part II of issue 177 (September 11, 1946) had its own pagination as an appendix (177A-1, 177-A2, etc.) containing 966 pages of organizational and procedural material on all executive branch agencies.

³² LexisNexis Index to the Code of Federal Regulations (1977-2001).

³³ Before 1964 the LSA was just called "List of Sections Affected."

³⁴ See <http://www.gpo.gov/fdsys/search/searchresults.action?st=collection:lsa>.

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