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No BuzzFeed listicle has ever proclaimed “Seven Amazing Protips for Researching the Code of Federal Regulations,” and there will likely never be a funny viral meme about administrative law research (although if there is, it will likely be an animated GIF of a frantic squirrel looking for acorns).¹

This article can only reveal one simple trick, and it is not that amazing, but it can help a lawyer to quickly determine the background to a regulation that they are researching. The trick is shockingly simple, but the general tangled nature of regulations and the fact that the tools were designed for print and moved to the Internet without any redesign, makes figuring it out with online tools more difficult.

A word about how a regulation becomes a “reg” is probably in order seeing as Schoolhouse Rock neglected that part of our education. A new regulation is devised by a federal agency to better effectuate the goals of a law that was enacted by Congress in either the recent or distant past. That “enabling act”

typically set out broad legal rules and designated a regulatory agency to work out the details by “promulgating” regulations.

A spanking new regulation is debuted in the pages of the *Federal Register* (FR), the daily publication of the executive branch at work. Following this, there is a minimum 30-day period for public comment, although an agency can provide more time, typically 60 days. Unlike Facebook and Instagram, the comments are more substantial than “like” or “t;dnr”² (although, *regulations.gov*, the official website for online comments, might actually benefit from allowing emoticons).³

After the comment period, the regulation is often rewritten to accommodate some of the comments, which often come from knowledgeable stakeholders. The regulation can then be republished for further comment or published as a “Final Regulation.” A final regulation, if deemed “general and permanent,” is then published in the *Code of Federal Regulations* (CFR).⁴

Lawyers typically start their research by finding the applicable regulation in the CFR, which is organized first by subject and then by regulatory agency. So, for example, Title 12 of the CFR covers banking, and the regs under that rubric are divided by the various agencies that ineffectively

regulate that industry, such the Treasury, the Federal Reserve, The F.D.I.C, etc. Once they have found an appropriate regulation, some lawyers ask themselves, why does this reg exist? What is its history? How might knowing this help my case? The answer is surprisingly easy, but does take some interpretation of the tools.

A CFR section always tells you where it comes from. For example, note 16 CFR 1222 “Safety Standards for Bedside Sleepers” (See Illustration 1). At the beginning of the two-section regulation, there are two notes: “Authority” and “Source.” The authority note points to two statutes enabling this regulation and the source note points you to the Federal Register page where this regulation was published as a final regulation. Reading them together, you see the reg was promulgated in 2014 on the authority of statutes from 2008 and 2011. A working hypothesis might be that the statute in 2008 was general and didn’t specifically call for regulations on bedside sleepers, but the 2011 did and might be important. Either way, you should check both these laws. Public laws can be found online at *congress.gov*.

The source note is your link to the administrative history of this regulation. In our example, the note directs you to “79 FR 2589, January 15, 2014.” (By the way, if you have a CFR section without a source note, page back to the beginning of the grouping of regulation sections on the same topic; unless a newer reg changes a section, the source is with the header and mini-table of contents for its particular part or sub-part).

Many lawyers see the source note, and then search for it by volume and page number, and completely miss the introductory section. The website *fdsys.gov*, where one can find both the official CFR and FR, even has a “Find-by-Citation” wizard to help you go directly to that page.

Here’s the shocking truth: the CFR takes you to the page where the **text** of the new regulation begins, but its **preface** begins one, two, even 20 pages ahead of that page. This made perfect sense when people researched using books. It was quite natural when flipping through the yellowed pages of bound volumes of the *Federal Register* to notice any preliminary material.

Instead of using the find-by-citation function on *fdsys.com*, click “Browse Government Publications,” on the front page. This will take you to a list of government publications. From there, choose “Federal Register,” pick “2014,” then drill down to “January 15.” At this point you can search by “Table of Contents” to go to the approximate page number, or search by agency if you know it from your prior research. This method will take you to the regulation joined by all preliminary material (See Illustration 2).

While each agency and regulation has its own idiosyncrasies, there are a few things to

look for in each section. First of all, it begins with several important bits of data. There is a “Summary” of the regulation, followed by a “Dates” block with the effective date at minimum, and a “For Further Information Contact” paragraph with the name, title, address, phone, and e-mail address of a person you can ask about the regulation. While the name and e-mail might change, the phone number and address usually follow the title.

The “Background Statement” or “Regulatory History” section (titles may vary) is the meat of the preamble and most of them have a number of useful things in common. First, there will be a brief history of the statutory authority. Second, if there are prior regulations being changed, this will be discussed in some specificity and a number of prior FR cites might be referenced. (Got those citations down so you can track them down later). Third, there will be typically a discussion of the comment period, summarizing important comments and how the agency dealt with them. If a comment or series of comments led the agency to re-write the regulation, there will be discussion of this. If there was a prior version of the proposed regulation, there will be a citation to it that you should examine.

You can probably skim over any boilerplate language at the end of the preamble certifying that the regulation followed the Administrative Procedure Act and/or the Paperwork Reduction Act. These are routine statements that the agency followed proper procedures in promulgating the reg. (Apparently, the sages of Congress determined in 1995 that the way to reduce paper was to add a three-inch paragraph to certain final regulations). You know that the preliminaries are over and the text of the final regulation is coming when you see language like “for reasons discussed in the preamble, the [agency] amends [title] as follows.”

Researching the history of some regulations is fairly straightforward; researching others is not. If the subject area being researched is one that has been controversial and been regulated and re-regulated for years, you may be directed to several older regulations that you will have to read, and those regs might send you to other citations to research. For example, if you are planning to research the history of something complex like the years of battles over safe seat-belt regulations and airbags, I would suggest blocking out a few hours in your schedule. Otherwise, you might be SHOCKED and AMAZED how long the research is taking.

Kurt X. Metzmeier is the associate director of the law library and professor of legal bibliography at the University of Louisville Brandeis School of Law. He and fellow UofL law librarians William A. Hilyerd and David J. Ensign are co-authors of the book, *Kentucky Legal Research* (Carolina Academic Press, 2012). ■



Illustration 1

[78 FR 50335, Aug. 19, 2013]

es a consumer
d for play yards
rted on or after

PART 1222—SAFETY STANDARD FOR BEDSIDE SLEEPERS

Sec.

1222.1 Scope.

1222.2 Requirements for bedside sleepers.

for play yards.

ed in paragraph
play yard must
table provisions
ndard Consumer
r Non-Full-Size
approved on May

AUTHORITY: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110-314, §104, 122 Stat. 3016 (August 14, 2008); Pub. L. 112-28, 125 Stat. 273 (August 12, 2011).

SOURCE: 79 FR 2589, Jan. 15, 2014, unless otherwise noted.

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Illustration 2

safety standard for bedside sleepers in response to the direction under Section 104(b) of the CPSIA.

DATES: The rule is effective on July 15, 2014. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of July 15, 2014.

FOR FURTHER INFORMATION CONTACT: Daniel Dunlap, Compliance Officer, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301-504-7733; email: ddunlap@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

The Consumer Product Safety Improvement Act of 2008, (CPSIA, Pub. L. 110-314), was enacted on August 14, 2008. Section 104(b) of the CPSIA, part

standard, ASTM F2906-12, “Standard Consumer Safety Specification for Bedside Sleepers,” with certain changes to provisions in the voluntary standard to strengthen the ASTM standard.

In this document, the Commission is issuing a safety standard for bedside sleepers. Pursuant to Section 104(b)(1)(A), the Commission consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public in the development of this proposed standard, largely through the ASTM process. The rule incorporates the voluntary standard developed by ASTM International (formerly the American Society for Testing and Materials), ASTM F2906-13, “Standard Consumer Safety Specification for Bedside Sleepers” (ASTM F2906-13), by reference, and

1 The Oxford Dictionaries website defines “listicle” as “a piece of writing or other content presented wholly or partly in the form of a list,” while a meme is described as a “humorous image, video, piece of text, etc., that is copied (often with slight variations) and spread rapidly by Internet users.”

2 “Too long; did not read.”

3 “A representation of a facial expression such as :-)” (representing a smile), formed by various combinations of keyboard characters and used in electronic communications to convey the writer’s feelings or intended tone.”

4 If a regulation is not general and permanent it is still good law. Examples of such regs might be certifications that specific airplanes meet Federal Aviation Administration regulations or periodic lists of water quality standards for particular waterways.