

## Locating Federal Environmental Law: The *United States Code* and the *Code of Federal Regulation*<sup>1</sup>

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When an act of Congress becomes law, its first official published form is a pamphlet called a "slip law." In research, slip laws are cited by giving the public law number, the Congress, and the date of approval. For example, the Federal Water Pollution Control Act Amendments of 1972 were approved on October 18, 1972, as the 500th law of the 92nd Congress to gain approval. If cited as a slip law, this act would appear as "Pub. L. 92-500, October 18, 1972."

Slip laws approved during a given session of Congress are cumulated into a permanent bound set known as the *United States Statutes at Large*. The *United States Statutes at Large* is the first permanent, published, version of federal legislation. It contains public and private laws, joint and concurrent resolutions, proclamations (but not executive orders) of the President, reorganization plans, and Constitutional amendments. The material in the *United States Statutes at Large* is copied verbatim from the original acts in what is known as "session law format." As soon as a law is published in the *United States Statutes at Large*, legal writers will cite the *United States Statutes at Large*, rather than the slip law. For example, the text of the Federal Water

Pollution Control Act Amendments of 1972 appears in volume 86 of the *United States Statutes at Large*, beginning on page 816 and ending on page 905. It will be cited as, "86 Stat. 816-905 (1972)."

Technically, when a legal researcher embarks on a search for "the law" on a particular topic, the session law form represented by the *United States Statutes at Large* is the "best evidence" in published form of federal enactments. The *United States Statutes at Large*, however, is not the source most frequently consulted by lawyers and researchers. There are several reasons for this. First, consider that most enactments are repealed or amended or expire by some date or event limitation within themselves, and may or may not be extended by subsequent act of Congress. Add to this the fact that all federal session laws as printed in the *United States Statutes at Large* are arranged chronologically by date of enactment, not by subject matter. Furthermore, session laws as published in the *United States Statutes at Large* include private acts (applicable only to one or a few specifically identified parties) which are not of general applicability and interest to the public. As a combined result of these factors, after only a few sessions of Congress, legal researchers attempting to

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use the *United States Statutes at Large* are faced with a hopeless mass of legislation for which the extent, meaning, and operative force cannot be easily determined.

Because of the inadequacies of the session law format (represented by the *United States Statutes at Large*) for legal research, the laws of general public interest that are currently in force are republished in a more user-friendly arrangement that is constantly updated by reference to later legislation. This republished form is called the *United States Code* (<http://www4.law.cornell.edu/uscode>). In compiling and updating the *United States Code*, temporary acts and all acts which have been repealed are omitted; all changes made by amendments are incorporated. The remaining acts, or parts of acts, are then combined and rewritten as necessary, and arranged in a classified order based on subject matter. The active public laws are organized under 49 titles of the *United States Code*. For example, the Federal Water Pollution Control Act, as amended, is now referred to as the Clean Water Act, and is codified at Title 33 of the *United States Code*, Sections 1251 to 1387. This means that the text of the Clean Water Act is to be found at 3 U.S.C., Sections 1251 to 1387."

Although the *United States Code* is the most frequently consulted source for United States law, the Supreme Court has ruled that the *United States Code* is only prima facie the law, and that the *United States Statutes at Large* is the official source for United States laws. Thus, in an instance where the text of a law as it appears in the *United States Code* is at variance with the text as it appears in the *United States Statutes at Large*, the latter version governs. An exception exists, however, with respect to about one-third of the titles of the *United States Code* which Congress has "reenacted into positive law." For those titles, the legislation reenacting them into positive law establishes them as the governing version of the law and repeals the original act from which the *United States Code* title is derived. In instances where a *United States Code* title has been reenacted into positive law, legal writers will cite the *United States Code*. Even in instances where the *United States Code* title has not been reenacted into positive law, legal writers often add the *United States Code* citation as a courtesy to their readers. Thus, for example, in an

article published in 1977, the author cited the Federal Water Pollution Control Act Amendments of 1972 as "Pub. L. No. 92-500, 86 Stat. 816 (codified at 33 U.S.C., Sections 1251-1376 (Supp. V 1975))."

The *Code of Federal Regulations (C.F.R.)* (<http://www.access.gpo.gov/nara/cfr>) is a part of the "Federal Register System." It exists to record the body of "administrative law." Administrative law is based on a common-sense recognition that the business of government must be transacted efficiently, and that Congress must therefore delegate some of its authority to the agencies and people who actually transact that business. Various agencies of the executive branch of government are given rule-making power as well as the preliminary power to make and enforce decisions under the rules.

Under the Federal Register Act of 1935, as amended by the Administrative Procedure Act of 1946, no person is bound by the terms of an administrative federal rule of general application unless that person has received actual notice or unless the rule has been published in the *Federal Register*. Established pursuant to the Act, the *Federal Register* is the most inclusive repository of federal administrative rules and regulations. The *Federal Register* publishes the literal text of administrative documents which are promulgated under law. The validity of these documents depends on such publication. The *Federal Register* is published on each day following a government working day. It began publication on March 14, 1936. The published federal documents are arranged under four principal headings: Presidential Documents, Rules and Regulations, Proposed Rules, and Notices.

Whereas session laws as published in the *United States Statutes at Large* are codified in the *United States Code*, similarly the administrative law documents published in the *Federal Register* are codified in the *Code of Federal Regulations*. That is, the *C.F.R.* bears the same relation to the *Federal Register* as the *United States Code* does to the *United States Statutes at Large* by including rules *actually in force* at the time a particular volume of the *C.F.R.* is published. Like the *United States Code*, the *C.F.R.* is divided into titles. The first five titles concern government organization. The remaining titles are

arranged alphabetically by subject matter. Many of the titles correspond in number and subject matter to those of the *United States Code*. So, for example, the Corps of Engineers' definition of "waters of the United States," is located at 33 C.F.R. Section 328.2(a), which is read as "Title 33, Code of Federal Regulations, Subsection Number 2 of Part 328, Paragraph (a)." The Environmental Protection Agency has certain key responsibilities and corresponding authority with respect to implementing the Clean Water Act, and its (identical) definition of "waters of the United States" is published at 40 C.F.R., Section 230.3(s).

As a basis for exploring the use of the *United States Statutes at Large* and the *United States Code*, some references associated with major federal government environmental legislation include the following:

1. National Environmental Policy Act (1970), P.L. 91-190, codified as amended at 42 U.S.C., Sections 4321-4347.
2. Clean Air Act Amendments of 1970, P.L. 91-604, 84 Stat. 1676, codified generally at 42 U.S.C., Sections 7401-7671.
3. Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, 86 Stat. 816, *et seq*, codified as amended at 33 U.S.C., Sections 1251-1387.
4. Federal Environmental Pesticide Control Act (1972) (amending the Federal Insecticide, Fungicide, and Rodenticide Act), P.L. 92-516, 86 Stat. 973, codified as amended at 7 U.S.C., Sections 136-136(y).
5. Endangered Species Act (1973), P.L. 93-205, 87 Stat. 884 (1973), codified as amended in scattered sections of 16 U.S.C., Sections 1531-1544.
6. Safe Drinking Water Act (1974), P.L. 93-523, codified as amended at 42 U.S.C., Section 300(f)-300(j).
7. Toxic Substances Control Act (1976), P.L. 94-469, codified as amended at 15 U.S.C., Sections 2601-2692.
8. Resource Conservation and Recovery Act (1976), P.L. 94-580, codified generally and as amended at 42 U.S.C., Sections 6901-6991.
9. Comprehensive Environmental Response, Compensation, and Liability Act (1980), P.L. 96-510, codified generally and as amended at 42 U.S.C., Sections 9601-9675.