

REPORT OF THE COMMITTEE ON INFORMATION, EDUCATION, AND REPORTS IN SUPPORT OF RECOMMENDATION NO. 3

The Committee on Information, Education, and Reports submits that the Parallel Table of Statutory Authorities and Rules (2 CFR Ch. I) should be an accurate and complete listing of United States Code provisions cited as rule-making authority in Executive agency documents which prescribe general and permanent rules. The Committee finds that the Parallel Table is deficient as an accurate and dependable finding aid because (1) agencies have not given sufficient time and attention to citing proper authorities and to keeping them current; and (2) the Table's coverage is not broad enough to include useful citations now lost under present methods of preparation.

I. BACKGROUND

The Parallel Table was originally designed to lead the legal researcher from the enabling act in his hand to the resultant regulation in the Code of Federal Regulations. The Table is based on the requirement of the Administrative Committee of the Federal Register that every agency rule must be covered by a citation to the authority under which the provisions are issued, which reads as follows:

§ 17.45 *General requirements.*

Each section in a document subject to codification shall include, or shall be covered by, a complete citation of the rule-making authority under which the provisions of the section are issued, including (a) general rule-making authority delegated by statute, (b) specific rule-making authority, if any, delegated by statute, and (c) executive delegations, if any, necessary to link the statutory authority to the issuing agency.

In the early days of the Federal Register when agency writers and their counsel were just learning how to draft Federal Register documents, the Federal Register Office employed a staff of attorneys whose primary function consisted of reviewing agency documents. Part of this review involved verifying authority

citations and calling the agency when a citation was in error or incomplete. By 1960, the volume of published rules had increased beyond the means of the small Federal Register staff. In addition to this, it was reasonable to assume that the issuing agency was now in a much better position to know what laws it was implementing and how to cite them. Consequently the Federal Register regulations were amended by adding the following section under the heading "Citations of Authority":

§ 17.46 *Agency responsibility; amendments.*

The accuracy and integrity of citations of authority are the responsibility of the issuing agency. Such citations shall be formally amended by the issuing agency to reflect changes in authority.

Now without benefit of the close review of authorities by the Federal Register staff, the general counsel of every agency was expected to be extremely careful in providing the correct authority citations and keeping them current. The Federal Register Office continued to provide assistance to small agencies which have no general counsel and to others on request.

To prepare the Parallel Table, Federal Register editors search the agency rules and list all United States Code provisions appearing in the authority citations. Authorities consisting only of public law number on U.S. Statutes at Large citations are changed to the parallel United States Code reference when possible. The Table is published annually as Chapter I of Title 2 of the Code of Federal Regulations. Additions to the Table are printed monthly at the end of the "List of CFR Sections Affected," a supplementary guide to the daily *Federal Register*.

II. FINDINGS

The accuracy of a citation is the issuing agency's responsibility; thus the reliability of the Table depends primarily on the care the agency takes to present and keep current the proper citations of authority for every provision promulgated. The degree of care has varied beyond acceptable limits. A spot check of the Table revealed many questionable entries. One citation may be so general that it is of little help to the researcher (see 18 CFR Part 602 or 25 CFR Part 22). Another may be so long and complicated that it tends to create confusion (see 46 CFR Part 163). One U.S.C. citation in Title 46 leads the researcher to more than 70 CFR parts. Further examination indicated little concern by the agency as to whether its citations of authority are really accurate or pertinent. Some rules have no citation to

the United States Code (see 25 CFR Part 47); others cite material in the text of the rule which is not picked up for the Table (see 42 CFR 77.1). And there are instances of total misunderstanding of what authority to use (see 32 CFR Part 257).

There is also a lack of concern about keeping citations current. Some rules in Title 7 CFR cite many authorities which have been obsolete for years. A review of 7 CFR Part 1871—a brief regulation—revealed that twenty-three of its twenty-seven citations were wrong, or unnecessary: Three of the provisions cited had been renumbered, fourteen had been repealed, three had related to bankruptcy actions, two applied only to Territories, and one was an authorization for appropriations rather than a rule-making provision.

III. CONCLUSIONS

To improve the table, at least two steps should be taken:

First, the agencies must be urged to review their statutory citation practices with the Parallel Table in mind. This review should include references appearing in the authority citations themselves, in the text of the rules, or in the preamble. All changes should then be included in formal documents prepared for publication in the *Federal Register* as CFR amendments.

Second, when the revised Parallel Table is prepared, its coverage should be expanded to include citations in preambles and substantive text, as well as those in the formal authority statements. At present, the Table lists only United States Code provisions cited as authority for issuance. Well-drafted rules normally contain a section called "Scope and purpose." This section cites statutory provisions being implemented by the rule. Often this valuable citation is not repeated in the authority citation, hence is not picked up for the Parallel Table.

Sometimes an agency will cite useful authorities in the preamble or discussion paragraphs of a document. Since only the substantive text of the rule is published in the Code of Federal Regulations, these citations also are lost.

Finally, there are many instances where a pertinent citation is missing, either because the statutory provision is not citable to the United States Code, or because the rules were issued before the United States Code supplement was published. A supplementary table listing these provisions by law number and U.S. Statute page should be created.