WILLIAM & MARY LAW SCHOOL

Legal Practice Handout: Regulations

Introduction

Legislatures sometimes delegate responsibility for creating law to administrative agencies. With their subject-matter specialists on staff, agencies are sometimes better able to address topics that are complicated or unpredictable. Law created by agencies is known as administrative law, the most important part of which are *regulations* (sometimes called *rules*). This handout focuses on researching federal regulations, but the same principles apply to state regulations. Current federal regulations are organized by topic in the ***Code of Federal Regulations (CFR)***.

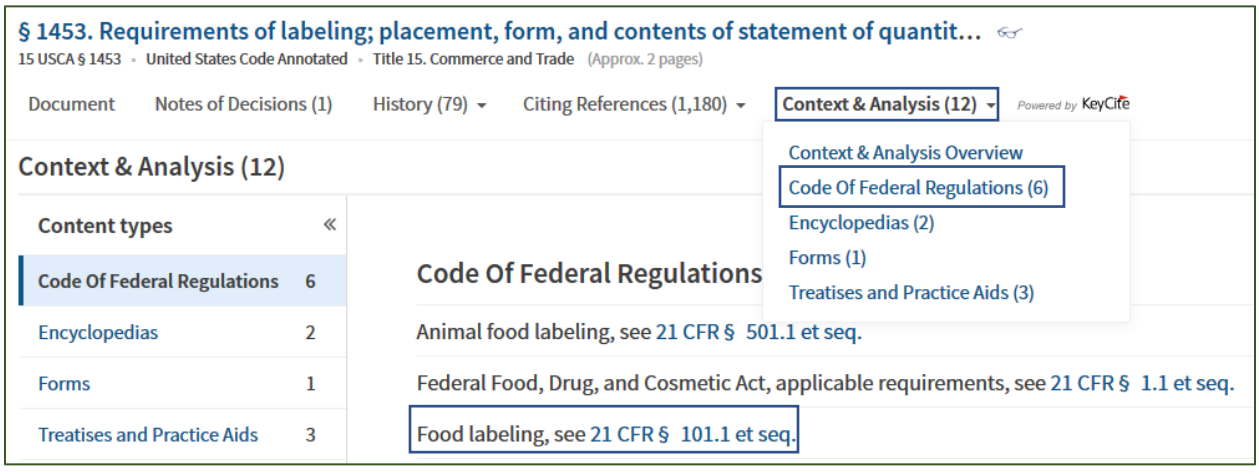
Where to Access the CFR	
Annotated	**Unannotated**
Westlaw	eCFR from GPO
Lexis	Annual editions from govinfo

Enabling Legislation

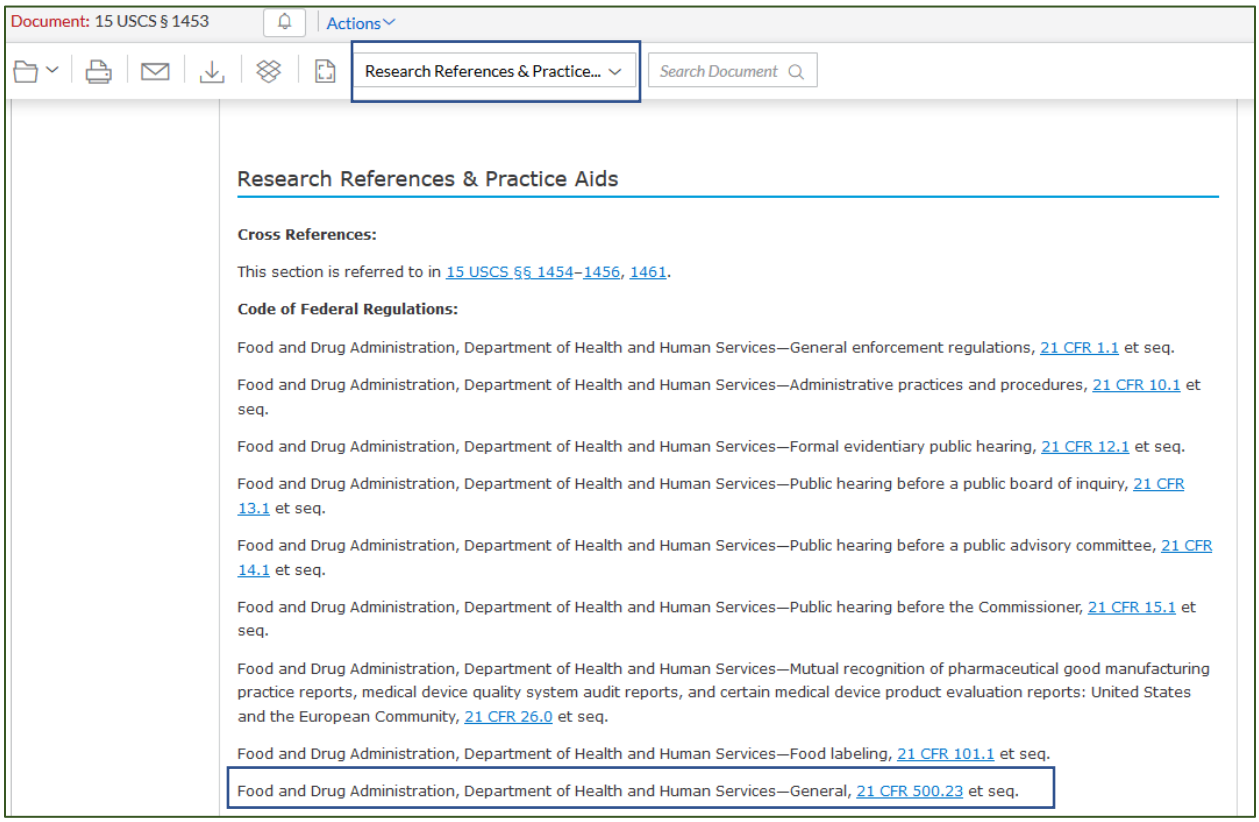
An agency needs authorization from Congress before it can create any regulations. Congress grants this authority through a statute called **enabling legislation**. Enabling legislation designates what agency has the authority to create rules and sets the boundaries of that authority.

If you are reading a U.S. Code section, you have several tools you can use to find the regulations associated with that section. For example, 15 USC § 1453 sets out labeling requirements for consumer goods, but we want to find out if an agency has passed any regulations that specify what the requirements are for fruit juice, and where we can find those regulations in the CFR.

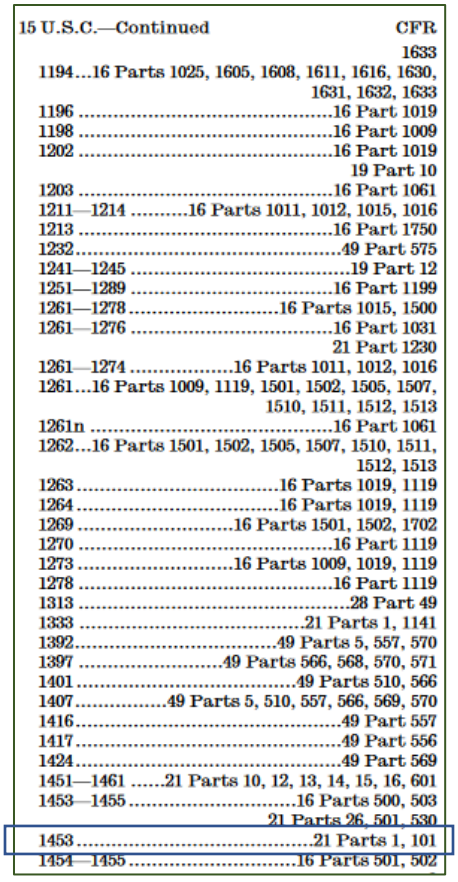
In Westlaw:



In Lexis:



If you're using the federal government's free eCFR website, refer to the Parallel Table of Authorities and Rules:



If you are reading a section in the CFR and you want to know where to find the enabling legislation, look for the line that says AUTHORITY or STATUTORY AUTHORITY.

Finding a Regulation in the Code of Federal Regulations

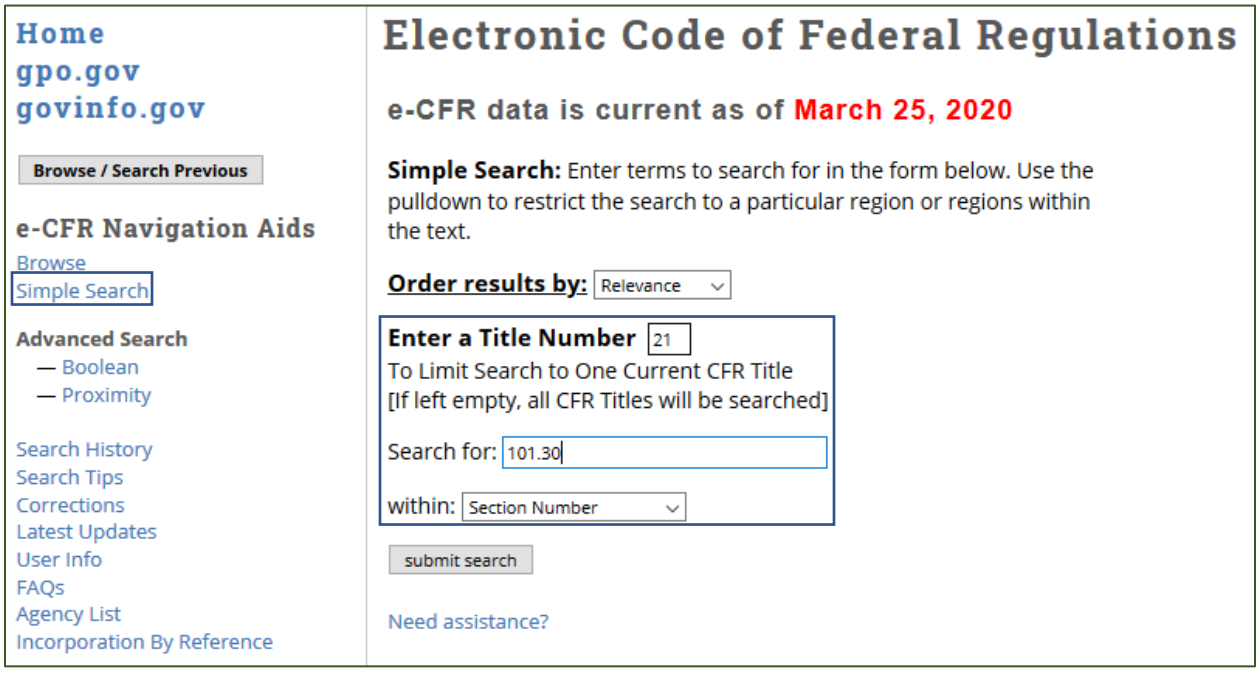
A citation to the CFR looks similar to a citation to the U.S. Code. Here's a citation to the CFR section on fruit juice beverage labels:

21 CFR § 101.30 (2019)

- *21* is the *Title* – a subject division of the CFR.
- *§ 101.30* is the specific section – Section 30 of Part 101 (a "Part" is a subject subdivision of the CFR).

You can enter this citation in Lexis or Westlaw to get the text of the regulation.

You can also use eCFR's Simple Search to retrieve a specific CFR section:



Final Rules and Proposed Rules in the Federal Register

When an agency creates a new regulation, it must first publish it as a **proposed rule** in the ***Federal Register*** and allow the public to submit comments. After the comment period is over and the agency has made any changes to the regulation as a result of the comments, the agency publishes it in the Federal Register as a **final rule**, which is binding law. The final rule is then arranged by subject in the CFR. The process is similar to how a bill becomes a statute:

STAGE	HOW A FEDERAL REGULATION BECOMES LAW	HOW A FEDERAL STATUTE BECOMES LAW
Proposal	Proposed Rule	Bill
Discussion	Comment period	Floor debates, committees
Passed	Final Rule	Session Law
Codified	Code of Federal Regulations	United States Code

When the proposed rule and final rule appear in the Federal Register, they are published together with background information. Reading this background information can help you better understand the purpose and meaning of a regulation, just as legislative history can help you understand statutes.

To find a final rule in the Federal Register, go to the history line at the end of a CFR section. This line will identify the final rules that created the CFR section with citations to the Federal Register in chronological order. Here is the history line in the eCFR for 21 CFR § 101.30:

> [58 FR 2925, Jan. 6, 1993, as amended at 58 FR 44063, Aug. 18, 1993; 58 FR 49192, Sept. 22, 1993; 81 FR 33994, May 27, 2016; 81 FR 59131, Aug. 29, 2016]

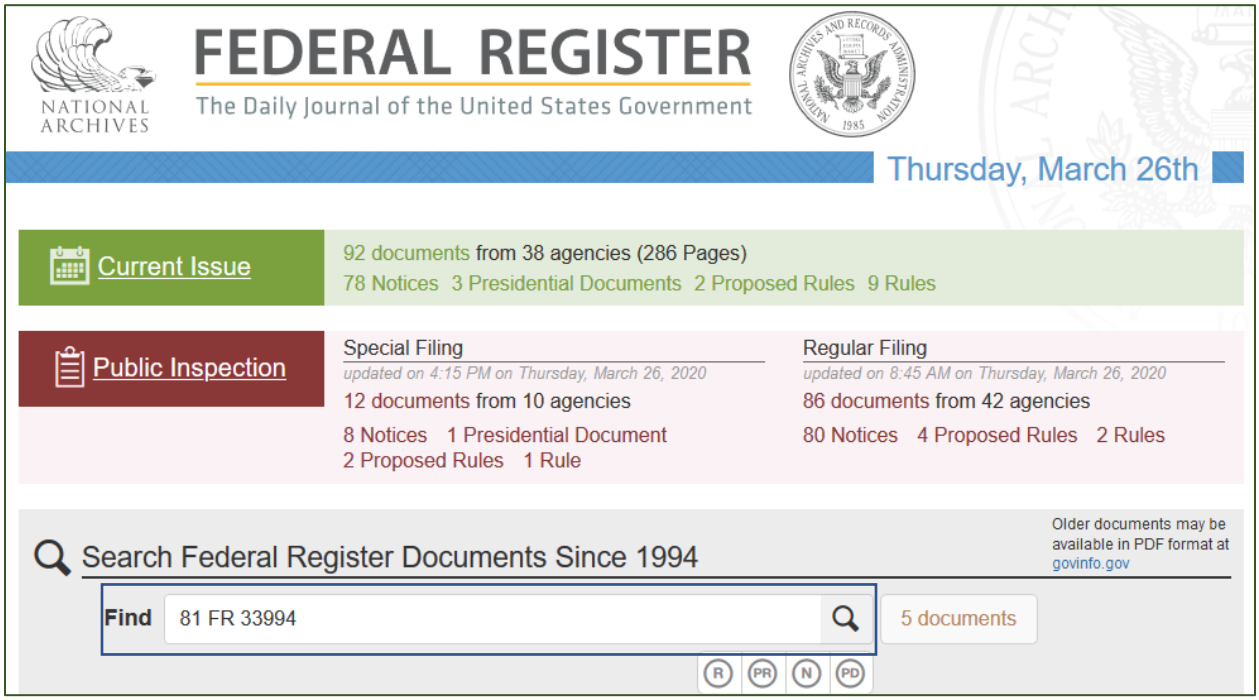
You can enter the Federal Register citation in Westlaw, Lexis, or the free government website federalregister.gov.

To find a proposed rule, look in the background information at the beginning of the final rule's entry in the Federal Register. Usually, the entry begins with a summary of the rule, then may include a statement of costs and benefits, followed by a history of the rule. Somewhere near the beginning of this history, you will find a citation to the proposed rule. Look for mention of a proposed rule or a Notice of Proposed Rulemaking (NPRM).

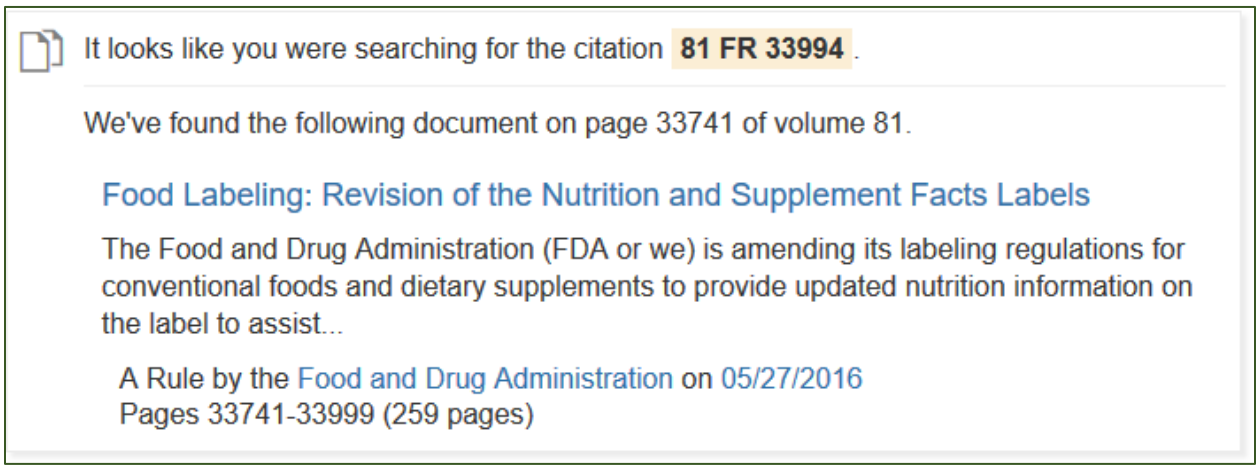
For example, to find the final rule that amended 21 CFR § 101.30 on May 27, 2016, look in that CFR section's history line and find a citation to 81 FR 33994:

- *81* is the volume of the Federal Register.
- *33994* is the page number within volume 81.

Enter the citation *81 FR 33994* in the "Search Federal Register Documents" search form on federalregister.gov:



You will get a result that looks like this:



Page 33994 is where the text of the regulation itself appears. In this case, you want the background information, which begins on page 33741.

Yet, as we considered the issues raised in the ANPRMs and the citizen petitions, the public health profile of the U.S. population changed, and new information became available about nutrient definitions, reference intake values, and analytical methods. New dietary recommendations also were published. We reconsidered what nutrients we should require or permit to be listed on the Nutrition Facts label and what nutrient reference intake values we should use as a basis for calculating the percent DVs in food labeling. We also considered corresponding changes to the Supplement Facts labels. Consequently, in the **Federal Register** of March 3, 2014 (79 FR 11879), we issued a proposed rule to amend our labeling regulations for conventional foods and dietary supplements to provide updated nutrition information on the label and to help consumers maintain healthy dietary practices. The preamble to the proposed rule discussed,

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Towards the beginning of the background information, you find a citation to the proposed rule at 79 FR 11879.