

## **Speed of Publication of Statutes and Regulations in the United Kingdom, Canada, and the United States**

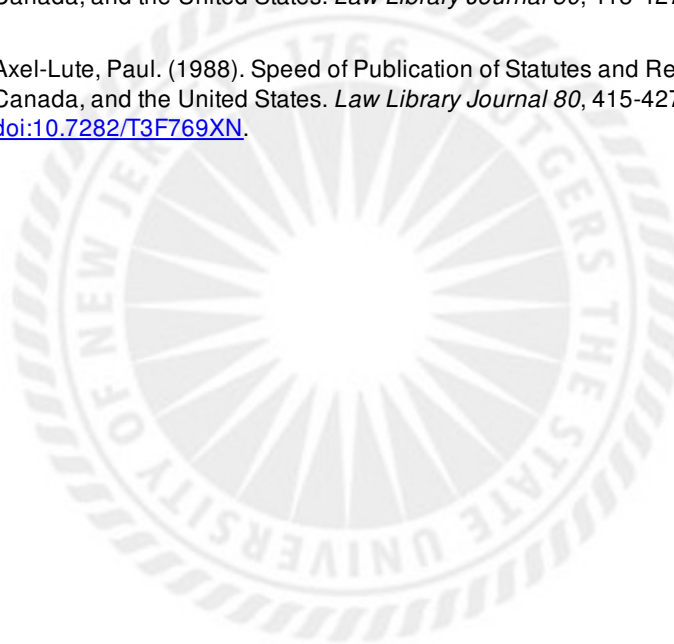
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# Speed of Publication of Statutes and Regulations in the United Kingdom, Canada, and the United States\*

Paul Axel-Lute\*\*

*Mr. Axel-Lute examines the reasons for typical delays in the publication of laws and regulations in England, Canada, and the United States. Federal laws in the United States are published more slowly because of the time taken to add marginal notes to the laws after enactment.*

## I. Introduction

Delays in the publication of new statutes and regulations can lead to the unjust imposition of penalties upon persons unable to learn the new rules. The maxim that "ignorance of the law is no excuse" is fair only if it is possible to know the law. Fundamental considerations of fairness would seem to imply a general rule that statutes and regulations cannot be effective until they have been published.<sup>1</sup> Yet, this rule is by no means generally recognized, and laws frequently are considered to be effective prior to their publication. A study quantifying typical delays in the publication of statutes and regulations in three major common-law jurisdictions—the United Kingdom, Canada, and the United States—thus seemed warranted.

## II. Methodology

I selected the year 1984 as the principal period to study; it was the most recent full year for which substantially all of the relevant materials were available when I began my research in the spring of 1985. I also gathered comparative figures for the previous five years in order to judge whether

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\*\* Assistant Law Librarian for Collection Development, Rutgers University Law School Library, Newark, New Jersey.

1. Murphy, *The Duty of the Government to Make the Law Known*, 51 *FORDHAM L. REV.* 255, 255 (1982).

1984 was a typical year for the number of new laws and regulations published. Because more bills are passed in the second session of Congress than in the first, the previous ten years were used for comparison for the United States statutes.

I used as enactment dates for statutes the date of Royal Assent (approval by the monarch or her representative) in the United Kingdom<sup>2</sup> and Canada,<sup>3</sup> or of Presidential approval in the United States.<sup>4</sup> For regulations, the date of approval by the head of the department or agency making the regulation is analogous to the enactment date of a statute. In the United Kingdom, the "made" date appears at the beginning of the regulation. In the United States, the date of signature by the agency head is usually found in the *Federal Register*, either at the end of the regulation or at the end of its preamble. Since Canadian regulations generally do not show the date of making, I used the registration date as the base date from which to measure the interval to publication.

Publication dates for United Kingdom statutes and regulations were taken to be the "issued" dates, as shown in records that I examined at Her Majesty's Stationery Office (HMSO). (These dates also appear in the *Daily List* of HMSO publications.) Copies of the statutes and regulations actually go on sale at HMSO's bookshop in London on the "issued" date. I also used records to determine the dates on which the statutes and regulations were dispatched to customers with standing orders.

For a Canadian regulation, I used as the publication date that which appeared on the masthead of the *Canada Gazette Part II*; for United States regulations, the date was that of the *Federal Register*.

For Canadian statutes, published in the *Canada Gazette Part III*, I could not determine the exact publication dates; therefore, I used the listings of *Part III* in the *Weekly Checklist of Canadian Government Publications* and information from the Manager of the Canada Gazette and Documentation Group to estimate the publication dates.

For the United States statutes in slip law form, I used as the publication date the first date the law was available for sale at the Government Printing Office Retail Sales Branch in Laurel, Maryland; these dates were supplied by a staff member there. I could not find out the dates the slip laws were mailed to subscribers, but an average lag time for this mailing was furnished by the Superintendent of Documents. The Office of the Federal Register furnished me with dates of the steps taken in the prepublication

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2. *Ex parte* Rashleigh, 2 Ch.D. 9, 12-13 (C.A. 1875); *Rex v. Smith*, [1910] 1 K.B. 17, 24-25 (Crim. App.).

3. *Drabeson v. Thompson*, 6 W.L.R. 587, 591 (Yukon 1907).

4. *Gardner v. The Collector*, 73 U.S. (6 Wall.) 499, 504 (1868).

editorial process. Depository shipping lists provided me with the dates the slip laws were distributed to depository libraries.

I included in the study all Canadian and United Kingdom public general statutes for 1984. I omitted about thirty percent of the United States public laws because of their ceremonial or hortatory nature.

Since there were many more regulations than statutes, I used only samples of regulations. The sampling method was different for each jurisdiction because of the different formats of publication. For United Kingdom regulations, published in slip form ("separates"), the sample consisted of the general Statutory Instruments (SIs) with numbers divisible by twenty. For Canadian regulations, arranged in order by registration date in the *Canada Gazette Part II*, the sample consisted of the first and last regulation in each issue. For United States regulations, the sample consisted of the documents starting nearest to each sixtieth "Rules and Regulations" page of the 1984 *Federal Register*. If a document did not include both a definite signature date and a definite effective date, the next nearest document was substituted.

### III. General Comparison

The principal findings regarding quantities and median lag times in the three jurisdictions are presented in table 1.

**Table 1**  
Jurisdictional Comparison (1984)

	U.K.	U.S.A.	Canada
<i>Laws</i>			
Number	62	408	50
Pages	2,876	3,414	1,604
Median lag to publication*	5	32	53
<i>Regulations</i>			
Number	1,475	5,154	940
Pages	6,055	15,473	3,971
Sample size (number)	63	243	52
Median lag to publication	8	5	10

\*Business days

Clearly, the median lag in number of days to publication does not depend on the quantity of material. The United States publishes its regulations as quickly as the United Kingdom issues laws, yet the number of pages of U.S. regulations is more than five times that of U.K. laws. Canada has the smallest quantities and takes the most time in getting

materials published. Nor does the lag depend on format, since the United Kingdom, using a separate format for both laws and regulations, publishes more quickly than does Canada, which uses a serial format for both, while in the United States the regulations in serial format are published more quickly than are the laws in separate format.

#### IV. United Kingdom

##### A. Statutes

Sixty-two public and general Acts of Parliament received Royal Assent in 1984. This was close to the mean number of acts during the previous years (sixty-one). The 1984 acts, however, were unusually long: totalling 2,831 pages, compared with a mean of 1,852 pages and a maximum of 2,276 pages for the previous five years.

Of the ten Royal Assent dates in 1984, the first was March 13, and the last was December 20. Fifty-three percent of the acts were assented to between June 26 and July 31.

The copy of the acts to be printed is sent by Parliament's Public Bill Office directly to St. Stephen's Parliamentary Press, an in-house press of Her Majesty's Stationery Office, located in Southwark, a borough of London. Because Royal Assent is assured,<sup>5</sup> it is possible to begin the process of publication as soon as a bill has passed its final parliamentary stage. In 1984, the final parliamentary stage occurred at a median interval of four business days before Royal Assent. In fact, manuscript copy is usually sent to HMSO for the "Royal Assent proof" even before the final parliamentary stage, presumably as soon as the Public Bill Office is confident of passage without further amendments. In 1984, this was at a median interval of ten business days before Royal Assent.

However, St. Stephen's always waits for the return of a certified copy before proceeding to print and deliver the act for publication. The median lag from Royal Assent to receipt of the certified copy was one day. The median lag from Royal Assent to publication was five business days. Ninety-two percent of the acts were published in fewer than fifteen business days.

Classification data on new HMSO publications are sent by telefacsimile from London to Norwich, 114 miles away. There the data are computer-matched with standing orders overnight. Invoices generated at Norwich are sent back to London by parcel service on an early morning train. Packing

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5. Bennion, *Modern Royal Assent Procedure at Westminster*, STATUTE L. REV., Autumn 1981, at 133, 143-44.

orders for dispatch at London is time-consuming because of a staff shortage. The median lag from publication date to dispatch clearance date, the date on which dispatch of an act to standing-order customers was completed, was seven business days.

Of the 1984 acts, thirteen entire chapters and parts of six others commenced, or went into effect, upon Royal Assent. Twelve acts and parts of eight others were to commence two months after Royal Assent; three acts and parts of two others were to commence three months after Royal Assent. The commencement dates of thirteen acts and parts of fourteen others were left to be appointed by the government departments responsible for their administration. By the end of 1984, thirteen commencement orders had been issued, bringing 1984 acts or parts thereof into force.

### *B. Statutory Instruments*

In the United Kingdom, documents by which the Sovereign in Council, Ministers of the Crown, and various other rule-making authorities exercise statutory powers to make subordinate legislation are known as "statutory instruments,"<sup>6</sup> or SIs. There were 1,119 statutory instruments in 1984, occupying 6,055 pages. These figures are close to the means of the previous five years (1,085 instruments and 6,146 pages).

The median lag from making to issuance for the sample of SIs studied was eight business days, and the median lag from issuance to dispatch clearance to standing-order customers was six business days. Of the fifty-eight SIs that had specific commencement dates, eighteen commenced before they were issued. For the forty issued before they commenced, the median interval was fifteen business days.

Because problems can arise when SIs are issued later than commencement, the Statutory Instruments Act provides:

In any proceedings against any person for an offence consisting of a contravention of any . . . statutory instrument, it shall be a defence to prove that the instrument had not been issued by His Majesty's Stationery Office at the date of the alleged contravention unless it is proved that at that date reasonable steps had been taken for the purpose of bringing the purport of the instrument to the notice of the public, or of persons likely to be affected by it, or of the person charged.<sup>7</sup>

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6. Statutory Instruments Act, 1946, 9 & 10 Geo. 6, ch. 36, § 1.

7. *Id.* § 3(2).

Commentators differ on whether statutory instruments can come into effect without publication.<sup>8</sup>

## V. Canada

### A. Statutes

The quickest publication for most new statutes in Canada is in the form of bills as passed on their third readings in the house of origin. Amendment of a bill by the other house is uncommon. In the 32d Parliament, 1st Session (1980-1983), 188 bills received Royal Assent, and only three Senate bills were amended by the Commons; in the 2d Session (1984 Chapters 1 to 40), there were no interhouse amendments.<sup>9</sup>

Third-reading bills are supposed to be printed during the night following passage and dispatched the next day. However, of fourteen third-reading bills listed in the *Weekly Checklist of Canadian Government Publications* for the period October to December 1984, only two appeared to have been published during the week of passage, while the other twelve were published during the following week.

The median lag from the third-reading date to the Royal Assent date was four business days for the 1984 acts. Assuming publication of the third-reading bill within five business days, this means, for most acts, publication as a third-reading bill no later than one business day after Royal Assent.

The relatively small number of bills in Canada means that it is practical to subscribe to all the bills and thereby obtain the texts of new laws. A subscription to the Canadian bills costs Canadian \$239 (about U.S. \$190).<sup>10</sup> There are many more United Kingdom and United States bills, and subscription costs are higher—United Kingdom £1,050<sup>11</sup> (or about U.S. \$1,900) and U.S., \$7,957,<sup>12</sup> respectively. Also, because of the higher frequency of interhouse amendments, the final texts of the laws often are not included.

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8. See, e.g., Lanham, *Delegated Legislation and Publication*, 37 MOD. L. REV. 510 (1974) (arguing that by common law, delegated legislation is not effective until published). *But see* Campbell, *The Publication of Delegated Legislation*, 1982 PUB. L. 569 (taking the contrary position).

9. Data from the years 1925 to 1963 indicate that about eighty-seven percent of the bills that pass both houses are passed without interhouse amendment. F. KUNZ, *THE MODERN SENATE OF CANADA 1925-1963: A REAPPRAISAL* apps. I & II (1965).

10. For Canadian subscribers, \$296.80 for other countries. See GOVERNMENT OF CANADA PUBLICATIONS 349 (Oct.-Dec. 1987).

11. See HMSO MONTHLY CATALOGUE viii (Oct. 1987).

12. See GOVERNMENT PERIODICALS AND SUBSCRIPTION SERVICES, Spring 1987, at 44 (Price List 36, Edition 205).

The fifty acts of 1984 had ten different Royal Assent dates, from January 19 through December 20. Seventy-eight percent received Royal Assent from June 7 through June 29, the end of the 32d Parliament.

The first official publication of the acts as such (rather than as bills) is in the *Canada Gazette Part III*, an irregular serial published since 1974. The 1984 acts appeared in seven issues. The median lag from Royal Assent to the nominal issue date—that is, the date appearing on the issue—was six business days, but the actual publication was much later. The Canada Gazette and Documentation Group receives copy three to six weeks after Royal Assent and requires an average of four weeks for production, resulting in distribution seven to ten weeks (thirty-five to fifty business days) after Royal Assent.<sup>13</sup> Actual publication dates were not available, but the median of the initial dates of the *Weekly Checklists* that listed the seven *Part IIIs* was forty-five business days later than the nominal issue dates. The median lag from Royal Assent to the estimated publication date was fifty-three business days.

Of the fifty 1984 acts, fifteen were effective retroactively, either wholly or in part. Sixteen, having no explicit provision regarding commencement, are assumed to have commenced on the date of Royal Assent.<sup>14</sup> Fifteen acts came into force, wholly or in part, on dates ranging from two days to eight months after Royal Assent. (Eleven of these commencements were effected by proclamation, rather than by dates in the acts themselves.) Four acts were still awaiting proclamation in force as of the end of 1985.

### B. Regulations

Regulation-making authorities in Canada must transmit their regulations to the Clerk of the Privy Council for registration within seven days after making them,<sup>15</sup> and the regulations must be published in the *Canada Gazette* in both official languages within twenty-three days after they are registered.<sup>16</sup> Generally, regulations are not to come into force before they are registered,<sup>17</sup> and no person may be convicted of contravening a regulation

that at the time of the alleged contravention was not published in the *Canada Gazette* . . . unless . . . it is proved that at the date of the alleged contravention reasonable steps had been taken to bring the

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13. Letter from C.G. Emond, Manager, Canada Gazette & Documentation Group (Oct. 29, 1984).

14. Interpretation Act, 1967-68, ch. 7, 4 R.S.C. 1970 ch. I-23, §§ 5(1), 6(2).

15. Statutory Instruments Act, S.C. 1970-71-72, ch. 38, § 5(1).

16. *Id.* § 11.

17. *Id.* § 9.



purport of the regulation to the notice of those persons likely to be affected by it.<sup>18</sup>

The regulations, which are designated by registration numbers prefixed by "SOR," are published in the *Canada Gazette Part II*, which appears every other Wednesday. Also included in *Canada Gazette Part II* are certain classes of statutory instruments other than regulations; these have registration numbers prefixed by "SI." Other nonregulatory statutory instruments, together with various kinds of notices, are published in *Canada Gazette Part I*, published weekly. The reason for the greater frequency of *Part I* appears to be the greater amount of material included in it: in 1984, *Part I* had 9,828 pages (including indexes), while *Part II* had 4,451 pages. *Part II* is given wider distribution than *Part I*, presumably because the contents of *Part II* are deemed to be of greater public importance than those of *Part I*. Copies of *Part II* are sent without charge to all public, university, and law school libraries in Canada.

The publication date shown on the face of each issue of *Canada Gazette Part II* is the actual publication date, the date copies are transferred to the Post Office; there have been no delinquencies since 1981.<sup>19</sup> Some issues of *Part II* are listed in the *Weekly Checklist* for the week after their issue date, however.<sup>20</sup>

The 1984 issues of *Canada Gazette Part II* contained 1,184 documents, of which 942 (80%) were SORs (regulations) occupying 90% of the total pages. The average SOR was four pages long. The mean annual number of documents published in *Part II* for 1981-1983 was 1,142; SORs were 85% of the total for those three years. In 1984, the median lag from the registration dates to the issue date of the first and last SORs in each *Part II* issue was ten business days. Assuming that registration took place as required—that is, no more than a week after making—the median lag from making to publication would have been no more than fifteen business days.

## VI. United States

### A. Public Laws

The new federal public laws of the United States are published as separates, or slip laws. In each two-year Congress, there are about twice as

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18. *Id.* § 11(2).

19. Letter from C.G. Emond, *supra* note 13.

20. From October to December 1984, only two examples of such lags were noted: the October 17, 1984, issue in the *Weekly Checklist* for October 22-26, and the November 14 issue in the November 19-23 checklist.

many laws and pages of laws in the second session (the even-numbered year) as in the first session. Moreover, on the average, more than half of each year's laws are enacted during the last quarter of the year (see table 2).

**Table 2**  
U.S. Public Laws, 1975-1984

	First Sessions (odd years)		Second sessions (even years)	
	Pages	Laws	Pages	Laws
Annual mean	1,473	195	3,270	391
Enacted Oct.-Dec.	49%	55%	59%	52%

The year 1984 was a typical second session, with 408 laws on 3,414 pages. Of these 408 laws, 130 were omitted from this study because of their insignificance: these were mostly laws authorizing the President to proclaim commemorative days, weeks, or months, and laws giving memorial names to federal buildings. The remaining 278 laws had a mean length of twelve pages. They were approved by the President on seventy-nine different dates. There was a noticeable bunching of approvals toward the end of the year: 153 laws were approved on sixty-eight dates before October 12; the other 125 laws were approved on only eleven dates, from October 12 through November 8.

The Office of the Federal Register (OFR) is responsible for assigning public law numbers and editing the new laws for publication. The editing includes addition of marginal notes, marginal citations, and legislative history information. During the end-of-session bunching, the editing at OFR becomes the most time-consuming portion of the publication process (see table 3).

**Table 3**  
U.S. Public Laws, 1984

	Approved		Total
	Feb. 14- Oct. 11	Oct. 12- Nov. 8	
Total number	257	151	408
Eliminated from study	104	26	130
Number studied	153	125	278
Mean length (pages)	11	12	12
Median lags (business days):			
(a) Presidential approval to sending manuscript copy to GPO	3	31	8
(b) manuscript copy sent to return of page proof	3	3	3

(c) page proof received at OFR to page proof returned	1	1	1
(d) page proof returned to finished work received	3	5	4
(e) finished work received to distribution approved & GPO notified	0	0	0
Presidential approval to distribution approved by OFR	12	43	17
Presidential approval to first date of GPO retail sale	27	63	32
Presidential approval to depository shipment	37	77	49

According to the Superintendent of Documents, the average lag from the receipt of approved page proofs to the mailing of the laws to the 194 paying subscribers was fourteen calendar days (for all 408 laws).<sup>21</sup>

It is not clear why depository distribution takes substantially longer than paid subscription and retail distribution. Monographic depository publications are generally classified and cataloged before being sent to depositories, a process which takes about twenty-five business days.<sup>22</sup> The slip laws are cataloged as monographs; however, their cataloging is done after their shipment, not before. Since 1978, the slip laws have gone out by first-class mail, separate from other depository shipments. According to the head of the Classification and Cataloging Branch of GPO, slip laws are mailed about two or three days, and never more than a week, after they are received in GPO's Library Programs Service.<sup>23</sup> There is thus an unexplained delay between placement on retail sale and receipt at the Library Programs Service.

Of the 1984 laws, there were twenty-two for which effective dates were specified later than the enactment dates, ranging from fifteen days to eighteen months. The remaining laws were either retroactive or effective upon enactment.

### *B. Regulations*

United States federal regulations are published daily (Monday through Friday) in the *Federal Register*. Part of the original law providing for the publication of the *Federal Register* states that

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21. Letters from Donald E. Fossedal, Superintendent of Documents GPO (Nov. 18, 1985 & Jan. 27, 1986).

22. Letter from Mark Scully, Director, Library Programs Service, GPO (Aug. 9, 1985).

23. Telephone interview with Sally McLean, Chief, Classification & Cataloging Branch, Library Programs Service, GPO (Aug. 21, 1985).

a document required . . . to be published in the *Federal Register* is not valid as against a person who has not had actual knowledge of it until the duplicate originals or certified copies of the document have been filed with the Office of the Federal Register and a copy made available for public inspection . . . . Unless otherwise specifically provided by statute, filing of a document . . . is sufficient to give notice of the contents of the document to a person subject to or affected by it.<sup>24</sup>

Soon after its original enactment, this provision was interpreted by the Attorney General to mean that publication was not essential to the validity of a document.<sup>25</sup> Although this provision has not been repealed, it may have been superseded by a later enactment, which states: "Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published."<sup>26</sup>

"Filed," as used in the original law, has been equated with "made available for public inspection," which normally occurs on the second working day after the document is actually received by the Office of the Federal Register; publication normally occurs one working day after filing.<sup>27</sup>

Publication of a substantive rule is generally supposed to occur at least thirty days prior to its effective date.<sup>28</sup> The Government Printing Office is required to get the *Federal Register* to the post office by 9:00 a.m. on the publication day; Monday's issue must be there by 9:00 a.m. on Saturday.<sup>29</sup>

**Table 4**  
(U.S.) *Federal Register*, 1984<sup>30</sup>

	Documents	Pages	Mean pages per document
Rules & Regulations	5,154 (15%)	15,473 (32.0%)	3.0
Proposed rules	3,350 (10%)	11,972 (24.5%)	3.6
Other*	26,047 (75%)	21,198 (43.5%)	0.8
Total	34,551	48,643	1.4

\* Includes notices, Presidential documents, etc.

24. Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1276 (codified at 44 U.S.C. § 1507 (1982)).

25. 38 Op. Atty. Gen. 359, 361 (1935).

26. 5 U.S.C. § 552 (a)(1) (1982).

27. 1 C.F.R. §§ 1.1, 17.2 (1988).

28. 5 U.S.C. § 553(d) (1982).

29. 1 C.F.R. § 5.7 (1986).

30. Based on information in letter from John E. Byrne, Director, Office of the Federal Register (Mar. 8, 1985).

A breakdown of the contents of the *Federal Register* in 1984 is given in table 4. The total pages and total documents in 1984 were both lower than in any of the preceding five years. However, the breakdown of contents for those years shows percentages and mean document lengths similar to those for 1984 (see table 5).

**Table 5**  
(U.S.) *Federal Register*, 1979-1983

	Mean annual totals		Mean pages per document
	Documents	Pages	
Rules & regulations	6,835 (17%)	17,435 (28%)	2.6
Proposed rules	4,534 (11%)	13,940 (23%)	3.1
Other	29,834 (72%)	30,286 (49%)	1.0
Total	41,203	61,681	1.5

Since government departments and regulatory agencies, unlike Congress, do not go in and out of session, the issuance of regulations does not exhibit the extreme seasonal variation found in enactment of statutes. In 1984, the percentage of the year's "Rules and Regulations" pages found in one calendar month varied only from 6% to 15%. The peak month was March.

The studied sample of 243 "Rules and Regulations" documents had a total length of 3,151 pages, 62% of which was actual regulatory text, the remainder consisting of preambles and appendices. The median lag from signature date to date of publication was five business days. Sixteen percent of the documents had effective dates prior to their publication dates. For the remainder, the median lag from publication date to effective date was nineteen business days. The mode, however, was zero, with 29% of the documents becoming effective on the date of publication.

## VII. Conclusions and Recommendations

Among the median publication lag-times investigated, the longest was for the statutes of Canada, in gazette form. This lag seemed to be mitigated by the quick publication of the acts in the form of third-reading bills. Obtaining the acts as third-reading bills would be an even more satisfactory method if it were possible to subscribe to just the third-reading bills, rather than to all the bills.

The next longest lag was for the statutes of the United States. There was a considerable delay during the end-of-session bunching of enactments, a major component of which was due to the time taken for editorial work in the Office of the Federal Register. This problem conceivably could be

alleviated by a seasonal reassignment of personnel to this task. Alternatively, the rules of the Senate and House of Representatives could be changed to require the marginal notes and citations to be part of all bills from their introduction—as is the practice in Canada and the United Kingdom. Legislative history references also could be added cumulatively to the bills during the legislative process. For some bills, presumably, this would have the effect of introducing some additional delay in the legislative process itself, as a trade-off for less delay in publication after enactment. A third possibility would be to abandon the practice of including marginal notes and citations and legislative history information on the slip laws. This information could still be added to the laws in their permanent bound form, the *Statutes at Large*.

In all three jurisdictions, there are institutional expectations for quick publication of regulations, embodied in statutes that condition the full effectiveness of the regulations on their publication. In the United Kingdom, there seems to be a similar expectation for the quick publication of statutes, simply as a matter of tradition rather than from any formal requirement. The United Kingdom statutes are treated as parliamentary publications and produced in the same milieu as bills and parliamentary working papers. In the United States, however, statutes are publications of the executive branch rather than of Congress, and there seems not to be sufficient expectation for their quick publication.

