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Research Guides

FEDERAL ADMINISTRATIVE LAW

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I. INTRODUCTION

Administrative law focuses on the exercise of government authority by the executive branch and its agencies. These agencies are created by Congress through “enabling legislation”, and are authorized to promulgate regulations which have the same force as statutory law. Federal agencies have steadily grown in number and importance in the United States, and affect a wide variety of social issues, such as telecommunications, the financial market, and racial discrimination. The term “administrative law” encompasses the procedures under which these agencies operate, as well as external constraints upon them (such as the Administrative Procedure Act, constitutional limitations, and judicial review).

Administrative law research can be complex due to the multiple functions of federal agencies. They act somewhat like legislatures through the rulemaking process, and somewhat like courts through the enforcement and litigation of these rules. As a result, administrative law research involves a broad spectrum of materials: from proposed regulations, to presidential orders, to the opinions of administrative law judges. This research guide describes these administrative materials and where they can be located in the Goodson Law Library and online.

II. GENERAL OVERVIEW

Treatises provide an excellent starting point to identify the issues and leading primary materials.

Alfred C. Aman, *Administrative Law* (West Hornbook series, 2d. ed. 2001) Reserve KF5402 .A8 2001.

Kenneth Culp Davis & Richard Pierce, *Administrative Law Treatise* (3 vols.) (4th ed. 2002) Reserve KF5402 .D315 2002. Recognized as the leading work on the topic.

William F. Fox, Jr., *Understanding Administrative Law* (4th ed. 2000) KF5402 .F68 2000

Ernest Gellhorn & Ronald M. Levin, *Administrative Law and Process in a Nutshell* (4th ed. 1997) Reserve KF5402 .G318 1997

Peter L. Strauss, *Administrative Justice in the United States* (2d ed. 2002) KF5402 .S87 2002
Explores themes in administrative law such as due process and fair hearing.

John W. Willis, *Administrative Law, Third Series* (also known as *Pike and Fischer Administrative Law*) KF5401.A56 P54 A current awareness, digest, citator, and reporter system containing decisions of the regulatory agencies concerning procedural aspects of the Administrative Procedure Act.

Other administrative law books can be found in the General Collection at the call number range KF5402 - KF5411.

III. INFORMATION ABOUT AGENCIES

Although much information about agencies can now be found online, print sources provide consistent and comprehensive information. The jurisdiction, structure, and function of an agency is important when researching administrative law. The following sources provide information about what agencies do, how they are organized, the laws and regulations under which they operate, and general contact information.

United States Government Manual

Reference Documents AE 2.108/2 and Reserve Collection (current edition)

Documents AE 2.108/2 (1940 - previous edition)

<http://www.gpoaccess.gov/gmanual/> (1995 - current)

This annually-published official handbook of the U.S. government provides information on the agencies of the legislative, judicial and executive branches as well as quasi-official agencies, boards, commissions and selected international organizations. Entries include contact information (including regional offices), and a summary of the agency's purpose, programs and activities. The Appendix lists agencies terminated, transferred or changed in name. A list of commonly used acronyms is also included. The web version of the Manual is browseable and searchable.

Federal Regulatory Directory

Reference JK 610 F29 (current edition)

This directory, published by Congressional Quarterly, begins with a chapter explaining the regulatory process and describing its history and growth. Subsequent chapters provide in-depth profiles of the officials and activities of the largest agencies. Especially useful for complex agencies is the information about statutes administered and where to find the rules and regulations in the C.F.R.. A list of acronyms and indexing by name and subject are detailed.

Federal Staff Directory, Reference JK 641 .F42 (current edition)

Federal Yellow Book, Reference JK 6 .F43 & <http://ldi.bvdep.com> (earlier editions in storage)

These directories are best used for finding names, titles and contact information for the people who work in executive branch agencies and departments. Name and subject indexes are included. The *Federal Staff Directory* also includes short biographies of key staff personnel. Both titles issue new editions several times a year.

LSU Libraries Federal Agency Directory

<http://www.lib.lsu.edu/gov/index.html>

Agency Web sites are generally excellent sources of information about their activities, personnel and organization. This web site provides links to all the regulatory agencies listed in the *U.S. Government Manual*. Entries are organized hierarchically, alphabetically and by type of agency group.

IV. RULES AND REGULATIONS

A. RULEMAKING

Congress transfers legislative authority to agencies under the delegation doctrine, which can be a broad or specific grant of power. Rulemaking is one of the main mechanisms through which agencies act. Administrative rules, also referred to interchangeably as regulations, are adopted by agencies and are considered primary legal authority.

The process of rulemaking is governed by the Administrative Procedure Act. Generally, the APA requires a process that includes publication of the **proposed rules**, a **period for comments** and participation in the decisionmaking, and adoption and publication of the **final rule**. See 5 U.S.C. § 553. This is known as “notice and comment” or “informal” rulemaking (i.e., informal in comparison with the more complex process required for laws made by Congress).

For more information on the rulemaking process, see the following titles:

Cornelius M. Kerwin, *Rulemaking: How Government Agencies Write Law and Make Policy* (3d ed. 2003) KF 5411 .K47 2003

Jeffrey F. Lubbers, *A Guide to Federal Agency Rulemaking* (4th ed. 2006)
KF 5411 .L83 2006

B. FINDING REGULATIONS

Federal regulations may be located by various methods, such as the use of references in secondary sources and through cross-references from statutes to regulations in an annotated code. Individual agency Web sites are also generally excellent places to find their relevant regulations and proposed regulations. In addition, several reliable online sources can be searched in various ways. These sources include LexisNexis, Westlaw, and the official GPO Access database. The federal government has also created **Regulations.gov** (<http://www.regulations.gov>), a Web portal for agencies' rulemaking documents, including proposed rules and text of public comments.

Indexes

The official print index to CFR, *Index and Finding Aids*, is limited in the subjects it uses and works best when you already know the agency that administers the regulations. The Index and Finding Aids volume also contains a Parallel Table of Authorities and Rules that can be used to find regulations using a statute. The list is not comprehensive, however.

For historical regulatory research, the CIS *Index to the Code of Federal Regulations* (available from 1986-2001 in the Law Library's Microform collection on Level 1) provides highly detailed indexing. However, this source is no longer published.

Statute to Regulation

To find what regulations have been promulgated under a specific U.S. Code or Statutes at Large section, use 'Table 1 - Authorities' in the Finding Aids section of the CFR Index and Finding Aids volume. Annotated codes, such as the U.S.C.A. or U.S.C.S., will also provide relevant regulations. Note that these sources are **not** comprehensive lists.

Commercial Electronic Services

Regulations on specific topics (such as tax, banking, or securities) can be found in looseleaf and electronic services, which the Goodson Law Library receives primarily in electronic format. These services are generally updated weekly or bi-weekly. Regulations are well-indexed and integrated with other materials on the same topic. CCH services are available to current Duke students, faculty and staff through IntelliConnect: <http://library.duke.edu/metasearch/db/id/DUK03667> . Publications from BNA are available at <http://library.duke.edu/metasearch/db/id/DUK02057>.

C. FEDERAL REGISTER

The *Federal Register* (F.R.) has been the official daily publication of the executive branch since 1936. It includes a variety of information about agency activities (such as notices, meetings, proposed and final regulations, and Presidential executive orders and proclamations).

Proposed and final regulations are accompanied by extensive explanation and background about the purpose of the action and the comments received. This information is often useful in interpreting regulations, in the same way that legislative history is used to interpret statutes. For help with using the *Federal Register*, visit the National Archives' tutorial page **The *Federal Register*: What It Is and How to Use It** (<http://www.archives.gov/federal-register/tutorial/>).

Print Access

The *Federal Register* may be found in the library at the following locations.

Current year (print): Federal Alcove, Level 3

1936 - 1972 (print): Documents US AE 2.106

1936 - current year (microform): Microforms, Level 1

Electronic Access

The full text of the *Federal Register* may be found electronically through a variety of sources. Resources marked with an asterisk (*) are available only to current members of the Duke Law community.

HeinOnline (<http://library.duke.edu/metasearch/db/id/DUK00693>): 1936 - current year (provided in PDF)

LexisNexis*: July 1980 - current year (updated daily)

Westlaw*: July 1980 - current year (updated daily)

GPO Access (<http://www.gpoaccess.gov/fr>): 1994 - current (provided in PDF and .txt)

Daily Updates

The Office of the Federal Register publishes the next day's F.R. contents on the **Public Inspection Desk** (<http://www.federalregister.gov/inspection.aspx>), arranged by agency.

Many lawyers rely on a daily table of contents from the F.R. to track agency activity. The Government Printing Office (GPO) supplies the table of contents through a listserv (<http://listserv.access.gpo.gov/archives/fedregtoc-l.html>). Westlaw includes a separate database for the table of contents (FR-TOC) from 1993 to date, and also offers the "Agency Tracker" e-mail service through its Alert Center.

LexisNexis does not provide the daily table of contents separately, but does offer a Federal Regulation Tracking source from 1997 forward. This source contains summaries of proposed regulations and status information.

D. CODE OF FEDERAL REGULATIONS

The *Code of Federal Regulations* (CFR) is the annual codification of the final rules published in the Federal Register. The CFR is divided into 50 titles that represent broad subject areas. Title 3 of the CFR contains presidential proclamations, executive orders, and other presidential documents that are required to be published in the *Federal Register*. Sometimes the *U.S. Code* title and the CFR title that covers the same subject matter match, but often they do not. For instance, tax laws are in title 26 of both USC and CFR; environmental materials are found in Title 40 of CFR, but in various titles of USC. Each title is revised once a year officially and the cover of each print booklet indicates the date of last revision. Electronic versions are updated more frequently, as described below.

Print Access

The Goodson Law Library owns a full set of the *Code of Federal Regulations*, dating back to its inception in 1938. The current CFR is located in the Federal Alcove (Level 3). Superseded volumes are on Level 1 in the Government Documents collection (Doc. AE 2.106/3).

Note: All volumes of Title 3 (Presidential materials), whether current or superseded, are located in the Federal Alcove on Level 3. See **section VII** of this guide for more information.

Electronic Access

Electronic versions of CFR can be found on **LexisNexis** and **Westlaw**, beginning in the early 1980s. (Westlaw excludes the Executive Orders and other presidential documents, but provides them in the separate PRES database). The CFR may be searched across all years, or in individual years. **GPO Access** (<http://www.gpoaccess.gov/cfr>) also provides the official CFR from 1996 to date in a searchable and browsable format. GPO also provides an unofficial, but more frequently updated, version called **e-CFR** (<http://ecfr.gpoaccess.gov>).

For historical versions of the CFR, **HeinOnline** (<http://library.duke.edu/metasearch/db/id/DUK00693>) has all volumes and supplements in PDF from 1938-present.

E. UPDATING REGULATIONS

Updating regulations is greatly simplified online, since electronic versions of the CFR are continuously updated. On LexisNexis and Westlaw, the CFR databases are updated to incorporate changes within 2 weeks. Westlaw also links to pending changes in the *Federal Register* using the KeyCite feature. The most current version of the CFR is the unofficial **e-CFR** from GPO Access (<http://ecfr.gpoaccess.gov>), which incorporates new amendments within 1 to 2 days.

In print, the traditional way to update the CFR is to use the **List of CFR Sections Affected** (LSA). This publication provides citations to the Federal Register for any changes

since the last annual update of the CFR title. LSA is issued monthly and cumulates annually. You will also find a list in the *Federal Register* issued on the last day of each month: *CFR Parts Affected in this Issue*.

LSA can be used to track the history of changes to a regulation over time. Each CFR volume also contains a table in the back noting repeals, amendments, renumbering and transfers of regulations. LSA is available electronically from GPO Access (<http://www.gpoaccess.gov/lisa/>) for the years 1986 forward. HeinOnline's *Federal Register* library includes LSA issues as well.

V. ADMINISTRATIVE DECISIONS AND RULINGS

Administrative agencies also have quasi-judicial and enforcement functions, and conduct hearings and issue decisions through administrative law judges. The procedures and publication of these activities varies widely. This information is not included in the *Federal Register*, but may be referenced there.

About 15 agencies currently publish decisions in court reporter form. Like federal rules and regulations, these agency decisions are available in several different places: officially published reports of decisions; commercial databases such as LexisNexis and Westlaw; agency Web sites; and looseleaf services. Publication of administrative decisions is more fragmented than rules and regulations, and there is no one place where all such decisions are located. Appendix D of Cohen, Berring and Olson's *How to Find the Law* (Reserve KF240 .H68 1989) lists the official and commercial publications covering administrative adjudications, interpretations, and opinions of the major regulatory agencies. Although this information is now quite out of date, it provides a useful starting point.

Officially Published Reports

Official publications from the agencies, such as the *Federal Trade Commission Decisions*, resemble standard court reporters. The *Bluebook* lists the official administrative publications in Table 1, at the end of the federal section. Most official administrative publications are located on Level 1 in the Documents collection and are arranged by Superintendent of Documents call number. Check the online catalog for Law Library holdings.

Electronic Access

Many administrative decisions are available on LexisNexis and Westlaw. Both systems have topical databases corresponding to the various areas of law which are subject to agency regulation. LexisNexis also offers the database **Federal Agency Decisions, Combined** for administrative decisions and opinions. Westlaw provides administrative decisions through the database **Federal Administrative Materials, All** (FADMIN-ALL); opinions from individual agencies may also be searched in separate databases.

HeinOnline (<http://library.duke.edu/metasearch/db/id/DUK00693>) has digitized many

official sources for administrative decisions in its U.S. Federal Documents Library, with most dating back to volume 1 for the publication.

The public website of a particular agency may also contain the full text of its decisions. A list of available agency materials is available from the University of Virginia at http://www.lib.virginia.edu/govdocs/fed_decisions_agency.html.

LLMC Digital (<http://library.duke.edu/metasearch/db/id/DUK00927>), a project of the Law Library Microform Consortium, is another electronic database which is in the process of digitizing older materials, including agency decisions. Dates of available online collections vary.

Electronic Commercial Services

Designed to compensate for the delay in official publication of agency decisions and the lack of comprehensive indexing, looseleaf services publish administrative decisions in their subject areas. The CCH services are available to current Duke students, faculty and staff through IntelliConnect (<http://library.duke.edu/metasearch/db/id/DUK03667>). Publications from BNA are available at <http://library.duke.edu/metasearch/db/id/DUK02057>. Older looseleafs in print are available on Level 1 in the Superseded Looseleaf collection.

VI. CITATORS

There are *Shepard's* citators for the CFR (including presidential proclamations, executive orders, and reorganization plans) and for many administrative decisions that can be used to find cases citing specific regulations and decisions. These are available in the Goodson Law Library through the online Shepard's service in LexisNexis. Westlaw's competing citator, KeyCite, also includes the CFR and selected administrative decisions. For tax research, the CCH and Prentice-Hall looseleaf services offer their own specialized citators.

Case annotations can also be located in U.S.C.S., which includes coverage from more than fifty commissions and boards.

VII. PRESIDENTIAL MATERIALS

The President of the United States issues a wide variety of documents, including executive orders and proclamations, messages to Congress, agency reorganization plans, and miscellaneous speeches, remarks, and letters. Many of these materials are included in Title 3 of the *Code of Federal Regulations*, and are also compiled into other publications.

A. EXECUTIVE ORDERS AND PROCLAMATIONS

Executive orders and proclamations are issued by the President and have legal effect. Although there is no legal difference between the two, **proclamations** are generally used to announce special events, such as Earth Day, and **executive orders** govern and direct agency

activities.

Print Access

Executive orders and proclamations are initially published in the *Federal Register* and the *Daily* (formerly *Weekly*) *Compilation of Presidential Documents*. They are compiled annually in Title 3 of the CFR and into the *Public Papers of the Presidents*. Proclamations are also published in *Statutes at Large* and *United States Code Congressional and Administrative News*.

The Law Library also owns a separate microfiche collection, *Presidential Executive Orders & Proclamations, 1789-1983*, which contains the full text of executive orders and proclamations from the George Washington to Ronald Reagan administrations. This set is arranged by CIS accession number and is accompanied by an extensive index (Ref. KF 70 .A55 1789-1983).

Proclamations and executive orders dating from April 1945 - January 1989 are also separately codified in the *Codification of Presidential Proclamations and Executive Orders*, which is shelved with the CFR in the Federal Alcove. The *Codification* provided in one source proclamations and executive orders that have general applicability and continuing effect. Note that this source is no longer published, although it may be useful for historical research.

Electronic Access

Individual executive orders and proclamations may be found online through a variety of sources. Resources marked with an asterisk (*) are available only to current members of the Duke Law community.

GPO Access: 1994 - present (via *Federal Register*; available document compilations also listed in next section)

LexisNexis*: 1981 - present

National Archives: 1945 - 1989 (<http://www.archives.gov/federal-register/codification/>)

Westlaw*: 1936 - present (executive orders); 1984 - present (other documents)

B. COMPILATIONS OF PRESIDENTIAL DOCUMENTS

Daily Compilation of Presidential Documents (2009 - present)

Formerly *Weekly Compilation of Presidential Documents* (1965-2009)

<http://www.presidentialdocuments.gov> (1993 - present)

HeinOnline: <http://library.duke.edu/metasearch/db/id/DUK00693> (1965- present; select "U.S. Presidential Library")

Documents AE 2.109 (1965 - 2000), Level 1

The *Daily* (formerly *Weekly*) *Compilation of Presidential Documents* is the most up-to-date reference source for the activities of the President. It contains proclamations, executive orders, speeches, press conferences, messages, statements, and a list of bills signed. From 1965-2009, the *Weekly Compilation* was published each Monday and

printed all items from the President released up to 5:00 p.m. of the preceding Friday. It is now a web-only daily publication, compiled into the *Public Papers* (see below) each year.

Public Papers of the Presidents of the United States

<http://www.gpoaccess.gov/pubpapers/index.html> (1991 - present)

HeinOnline: <http://library.duke.edu/metasearch/db/id/DUK00693> (1929-present)

Documents AE 2.114 (1929 - present), Level 1

The *Public Papers of the Presidents* contain public presidential documents and speeches in a convenient printed volume. The *Public Papers* have been published for every President since Herbert Hoover, with the exception of Franklin D. Roosevelt, whose papers were published privately (see below). The *Public Papers* include the State of the Union Address, budget and economic messages, other formal communications to Congress, news conferences, addresses and informal remarks, letters to congressional leaders and agency heads, and the public records of meetings with foreign leaders. Beginning with the Carter administration in 1977, every item contained in the *Weekly* (now *Daily*) *Compilation of Presidential Documents* is also compiled into the *Public Papers*.

Earlier compilations of presidential documents include:

Public Papers and Addresses of Franklin D. Roosevelt

HeinOnline: <http://library.duke.edu/metasearch/db/id/DUK00693> (select "U.S. Presidential Library")

E806 .R749 1938, Level 1 (vols. 10-13 only; full set available at Perkins or LSC)

Presidential Addresses and State Papers of Theodore Roosevelt

E660 .R77 1970, Level 1

A Compilation of Messages and Papers of the Presidents, 1789-1897 (1898)

HeinOnline: <http://library.duke.edu/metasearch/db/id/DUK00693> (select "U.S. Presidential Library")

Documents Y 4.P 93:3, Level 1

The American Presidency Project, an unofficial Internet archive sponsored by the University of California, Santa Barbara, also provides the entire set of *Public Papers* and its earlier versions in HTML format at <http://www.presidency.ucsb.edu/ws/>.

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