

Regulations and Administrative Law

Research Refreshers
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Roadmap

- What is Administrative Law?
- What is the rulemaking process?
- How do you find and update regulations?
- How do you find agency decisions?

Highly Regulated Society

- Banking (FDIC)
- Environment (EPA)
- Health (FDA)
- Labor Law (NLRB, OSHA)
- Tax (IRS)
- Securities (SEC)
- Utilities (FCC, FERC)
- Trade (FTC)

How did we get here?

- 35 new agencies created from 1900-1940.
- 18 agencies created in the 1930s as part of the New Deal.
- Needed some governance of this governance.
- Administrative Procedures Act – took 10 years to write and became law in 1946.

What is Administrative Law?

1. Research into substantive administrative law and underlying powers and procedures
2. Research into the activities and issuances of the Executive branch
3. **Research into regulatory activities and actions**

Substantive Administrative Law

- *Administrative Procedure Act (APA) (5 USC §551 et seq.)*
- Theory
 - Information publicly available
 - Public participation in rulemaking
 - Uniform standards for rulemaking and adjudication
 - Scope of judicial review
- Organization
 - How the process works

Executive Branch Documents

- Executive Orders
- Proclamations
- Determinations
- Letters & memoranda
- Reorganization plans

Regulatory Activities and Actions

Actions by Agencies:

- Rules & Regulations (quasi-legislative)
- Decisions (quasi-judicial)
- Advisory Opinions (sometimes)
- Reports

How does Admin law work?

- Somewhat like legislatures b/c authorized to promulgate regulations which have the same force as statutory law
 - Quasi-legislative
 - Rulemaking activity
- Somewhat like courts through the enforcement and litigation of these regulations in agency decisions
 - Quasi-judicial
 - Decision-making activity

Rulemaking

- Legislative authority delegated by Congress (authorizing statutes or enabling legislation)
- Agency can't take on more power than what is delegated to it
- Follow procedures prescribed in Administrative Procedure Act, 5 U.S.C. § 551 et seq.
- Documented in the Federal Register publication system
 - Federal Register
 - Code of Federal Regulations (CFR)

Process of Making Regulations

- If 3-step process:
 - Agency publishes advance notice of rulemaking and solicits comments before proposing new regulation
- Agency proposes new regulation
 - Publishes draft in *Federal Register*, calls for comments, maybe a hearing.
 - Considers comments and hearing testimony (if any).
- Agency revises draft regulation, publishes final version with notice that it is a "final rule," also in the *Federal Register*.
- Regulations are later compiled into a subject arrangement in the *Code of Federal Regulations*.

The Federal Register

- Published every business day (in print and at <http://www.gpoaccess.gov/fr/>, as well as on Westlaw and Lexis and Hein)
- Includes the text of proposed and final regulations, notices, presidential documents
- Not the best source for researching currently effective regulations because ...?

Contents of Federal Register

- Contents and preliminary pages
- CFR Parts Affected in this issue
- Final Rules & Regulations
- Proposed Rules
- Notices
- Presidential Documents
- Reader Aids
- Corrections

Where to Find



- HeinOnline (vol. 1 –)
- Westlaw (vol. 1 –)
- Lexis (vol. 45 –)
- LN Congressional (vol. 45 –)
- GPO Access (vol. 59 –)
- Regulations.gov (current)

How to Find Rules & Regulations in the Federal Register

- Source notes from the CFR
- Citations
- Full-text searching
- Indexes (not easy to use)

How to Find Comments

- Regulations.gov for regulations recently in the pipeline
 - Newish website that plans to be one-stop shopping for all administrative activity
 - For now, many, but not all, agencies participate
 - Varying levels of participation
- Agency's website



The screenshot shows the homepage of www.regulations.gov as of March 23, 2009. The page features a search bar, navigation links, and several informational boxes. The search bar includes a 'Go' button and a checkbox for 'Selected to find documents accepting comments or submissions'. Below the search bar are three boxes: 'About Regulations.gov', 'What's New?' (highlighting streamlined home-page searching), and 'Feature Highlight' (promoting a daily RSS feed). The footer contains links for Privacy and Use Notice, Accessibility, Contact Us, Glossary, and FAQ.

What does it do?

What is on this Site

Regulations.gov is your source for all regulations (or rulemakings) issued by U.S. government agencies. On this site, you can find:

- All Federal regulations that are open for public comment (i.e., proposed rules) and closed for comment (i.e., final rules) as published in the Federal Register.
- Many Federal agency notices published in the Federal Register.
- Additional supporting materials, public comments, and Federal agency guidance and adjudications.

When you find a document, you can also submit comments through the web site on those documents that are open for public comment.

For Congressional bills become laws, Federal Departments and Agencies are responsible for enforcing those laws through regulations. Departments and Agencies develop regulations through the Federal rulemaking process, most commonly through a notice-and-comment process. In general, Departments and Agencies publish proposed rules that are open for public comment, and after a specified timeframe the Department or agency publishes a final rule based on public comments and other information. Regulations.gov visitors can find Federal proposed and final rules published every business day for the National Archives and Records Administration (NARA) in the U.S. Government's Federal Register, and submit comments through the web site to the Agencies on proposed rules that are open for public comment.

The Regulations.gov web site also houses other types of Federal information, in addition to Federal regulations, many Departments and Agencies use Regulations.gov to post their types of documents open for public comment, such as Agency significant guidance. Certain Federal Agencies also allow the public to initiate an action to bring a submission via Regulations.gov.

Each Department or Agency determines what information is made available on the site. Therefore, the information displayed on Regulations.gov does not and document details screens and comment forms is unique for each Department and Agency and conforms to each Department or Agency's internal policy. For additional information on a specific Department or Agency, visit www.usa.gov.

If you're looking for government information not on this site, you can try the following web sites:

- USA.gov the official portal to the U.S. Government.
- Business.gov the official business web to the U.S. Government. It provides information on regulatory compliance and other information for small business owners.
- e-CFR provides access to the electronic Code of Federal Regulations for a compilation of all final Federal regulations.

Some terms used on this site include:

- The **Federal Register** or **FR** is the official daily publication for rules, proposed rules, and other notices of Federal Departments and Agencies and organizations, as well as other government documents. Regulations.gov is updated daily by the National Archives and Records Administration (NARA) using electronic versions of the same Federal Register documents posted every business day to ensure that regulations open for comment are available for public access. For additional information on the Federal Register, visit <http://www.gpoaccess.gov/fr/>

Code of Federal Regulations

- Subject arrangement of regulations in force on a given date
- 50 numbered titles (numbers **don't** always correspond to title numbers in the U.S.C.!)
- Each title republished once per year
- No pocket parts – in print, update using the *Federal Register* and *List of Sections Affected* (better to do research electronically if possible!)

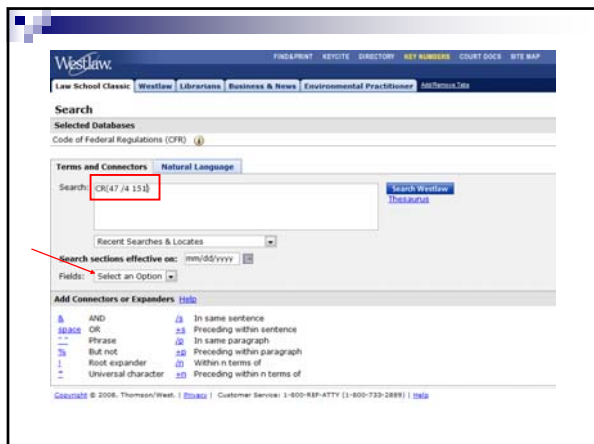
Contents

- *Cover and Title* page to the pamphlet
- *Table of Contents* to each pamphlet
- *Explanation* (how to use and update)
- *This Title* page (organization of title)
- *Table of Contents* to each chapter
- *Table of Contents* to each part
- *Authority* note
- *Source Note*
- *Cross Reference Note* providing citations to related CFR parts and sections (not always provided)
- *Finding Aids*

Where to Find



- HeinOnline (1938-1986, 2004-2007)
- GPO Access (1996 -)
- eCFR (GPO) (current)
- Cornell's LII (current)
- Lexis/Westlaw (1981 / 1984 -)
- LN Congressional (1981 -)
- Fiche (1938 -)



How to Find Regulations

- When you have an agency name and topic
 - CFR Index
 - Agency prepared index
 - Lexis/Westlaw
 - Lexis: Use “agency” segment
 - Westlaw: Use “PR” field

How to Find Regulations

- When you have a subject
 - Westlaw CFR Index
 - Keyword searches

Westlaw: RegulationsPlus

- Newish product
- Created an annotated CFR
 - Makes doing regulatory research similar to doing statutory research
 - Direct citations to cases, administrative decisions, secondary sources, etc.
 - Easy cross-references

Updating regulations

- Only printed once per year
- Online: GPOaccess.gov is pdf (print)
- E-CFR is html (current with 1-2 days)
- Then update using the Federal Register
- Can also use Westlaw or Lexis, but e-CFR is very up-to-date

E-CFR

- Gives you date through which it is current
- For the days in between that date and your date, check:
 - TOC for fr
 - Grouped by agency
 - Must check every issue

Basic Research Steps

- Determine regulating agency
- Search or browse the C.F.R.
 - Print
 - Database (Westlaw, Lexis, GPO Access, maybe agency web site)
- Read the regulation(s).
- Update the regulation(s).
- Identify authorizing statute(s) and read them, too.

Optional: Regulation History

- Useful when you're trying to interpret an ambiguous regulation

- "Final Action" notices in *Federal Register* usually provide discussion of reasons why regulation was adopted, including discussion of comments.

Why are there agency decisions?

- Agencies have the power to enforce regulations.
- To do so, they must first determine if a violation has occurred.
- A hearing is often held, and...
- a written decision that interprets the regulations is handed down.

Finding Agency Decisions

- Agency Decisions aren't gathered in one place, as regulations are in the CFR.
- Many agencies publish their own reporters, some of which are seriously out of date.
- Where else to go?
 - Agency's web site
 - Loose-leaf Services
 - Lexis/Westlaw

Finding Agency Decisions

- More complicated b/c no single place where decisions are published or aggregated, i.e., no decisions.gov
- Where are they:
 - Agency web sites
 - Wexis
 - Loose-leaf services
 - Official agency reporters (if you are working for CPSC, you will have access to all of their decisions)

Agency Websites

- Often the best place to begin:
 - Regulations and authority statutes
 - Administrative decisions
 - Press releases
 - Recent reports
- URL:
 - Often www.____.gov
 - Can find using the LSU site or at usa.gov

Navigating Agency Websites

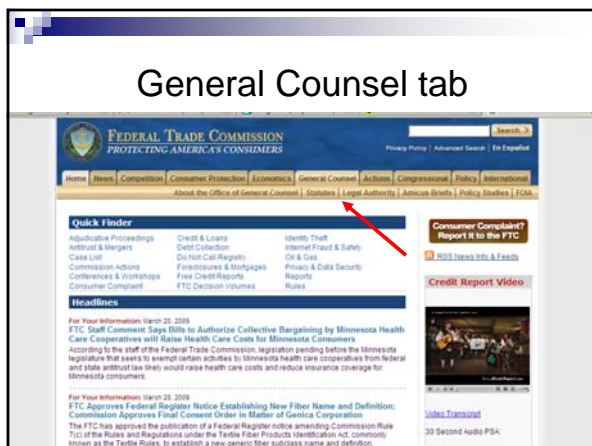
■ Look for headings like:

- Legal
- FOIA
- Laws
- Library
- Enforcement
- Interpretations
- Litigation

www.ftc.gov



General Counsel tab



FTC Enforcement Actions

Advisory Opinions

www.cpsc.gov/library

Mandatory Recall Notices

24 2009
regulations.gov

Home Reports Regulatory Agenda Help

Docket **CPSC FRDOC 0001**
Docket Title Recently Posted CPSC Rules and Notices.
Docket Type
Document ID CPSC_FRDOC_0001-0005
Views
Add Comments
How To Comment Comments should be e-mailed to mandatoryrecallnotices@cpsc.gov. Comments also may be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504-7923. Comments may also be filed by facsimile to (301) 204-0127. Comments should be captioned "Section 15() NPR."
Title Guidelines and Requirements for Mandatory Recall Notices
Document Type PROPOSED RULES
CFR Citation 16 CFR Part 1113
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