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 that 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

www.regulations.gov

What does it do?

What is on the Site

Regulations.gov is your source for all regulations (or subregulations) issued by federal government agencies. On this site you can find:

- All Federal regulations that have been proposed or finalized, as well as information about the Federal Register, in one convenient location.
- Search for regulations and comments through the site or through the documents that are open for public comment.
- Become an active participant in the Federal Register and regulatory process by making your comments known to agencies, Congress, and the public.
- Use the site to find sections of regulations that have been proposed or finalized, and to respond to notices of proposed rulemaking and comments on those notices.
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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

- 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 a statute
  - Parallel Table of Authorities and Rules
    - In the CFR Index and Finding Aids volume
  - USCA/USCS annotations
  - LN Congressional (search by statute)
  - Looseleaf/ Databases
  - Lexis/Westlaw
    - Lexis: Use “authority” segment
    - Westlaw: Use “CR” field

Finding Regs When You Have a Statute

[Parallel Table of Authorities & Rules, from CFR Index]
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
About CPSC

Q: Does CPSC have jurisdiction over all consumer products?
A: No. The law specifies that the CPSC may only regulate certain high-hazard categories of products. This includes, but is not limited to, vehicles, child safety, toys, sports equipment, and child- and pet-related products. The agency has no jurisdiction over all consumer products.

Q: How does CPSC establish safety standards for products?
A: CPSC establishes safety standards for products by setting voluntary guidelines and regulations that manufacturers, retailers, and importers are encouraged to follow. These guidelines are based on the latest research and safety data, and are designed to prevent injuries and deaths from consumer products.

Q: Why is it important to follow these safety guidelines and regulations?
A: Following safety guidelines and regulations is important because it helps protect consumers from injuries and deaths caused by unsafe products. By following these guidelines, manufacturers can help ensure that their products are safe for consumers.

Importance of Proposed Regs

- You can advise your client on what might be happening in the future so that they can plan their conduct accordingly.
- Or your client may want to comment.
- Use regulations.gov