



# 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 they 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), 3d. ed. Reserve KF5402 .A8 2014.

Kenneth Culp Davis & Richard Pierce, *Administrative Law Treatise* (3 vols.), 5th ed. Reserve KF5402 .D315 2010. Recognized as the leading work on the topic.

William F. Fox, Jr., *Understanding Administrative Law*, 6th ed. KF5402 .F68 2012.

Ernest Gellhorn & Ronald M. Levin, *Administrative Law and Process in a Nutshell*, 5th ed. Reserve KF5402 .G318 2006.

Richard J. Pierce, *Administrative Law: Concepts and Insights*, 2d ed. Reserve KF5402 .P528 2012.

John W. Willis, *Administrative Law, Third Series* (also known as *Pike and Fischer Administrative Law*) KF5401.A56 P54 (updated through 2013). 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 are all 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.gpo.gov/fdsys/browse/collection.action?collectionCode=GOVMAN> (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 JK610 .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 Yellow Book*, online via Leadership Library on the Internet at <http://search.library.duke.edu/search?id=DUKE004036077>; (earlier winter editions in storage) The Leadership Library directories can be used for finding names, titles and contact information for the people who work in executive branch agencies and departments.

### **USA.gov Federal Agency Directory**

<https://www.usa.gov/federal-agencies/a>

Agency websites are generally excellent sources of information about their activities, personnel and organization. This site provides links to all the regulatory agencies listed in the *U.S. Government Manual*.

## **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 decision-making, 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*, 4th ed. KF5411 .K47 2011
- Jeffrey F. Lubbers, *A Guide to Federal Agency Rulemaking*, 5th ed. KF5411 .L83 2012

### **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 websites 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 Bloomberg Law, LexisNexis, Westlaw, and **FDsys** (<http://www.gpo.gov/fdsys/>). 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 and Compilations

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.

The database **ProQuest Regulatory Insight** (<https://search.library.duke.edu/search?id=DUKE006531419>) offers detailed indexing and searching of the *Federal Register* and *Code of Federal Regulations*, as well as compiled regulatory history materials related to enacted federal laws. Currently, the database covers the time period 2001-2015, but will be expanded back to 1936 over the next year.

For historical regulatory research, the print *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, or the "Search by Number" feature of **ProQuest Regulatory Insight** (<https://search.library.duke.edu/search?id=DUKE006531419>). Annotated codes, such as the U.S.C.A. or U.S.C.S., will also provide citations to 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://search.library.duke.edu/search?id=DUKE004195287>). Publications from **Bloomberg BNA** are available at <http://www.law.duke.edu/lib/lresources/bna> or through Bloomberg Law (<http://www.bloomberglaw.com>).

## 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/>).

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

- **1936 - 1972** (print): Documents US AE 2.106
- **1936 - current year** (microform): Microforms, Level 1

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.

- **FederalRegister.gov** (<http://www.federalregister.gov>): 1994 – present
- **FDsys** (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>): 1994 – present (provided in PDF and .txt)
- **HeinOnline** (<http://db.library.duke.edu/search?id=DUKE003131760>): March 1936 – present (provided in PDF)
- **ProQuest Regulatory Insight**: 2000 – present (will expand back to 1936 over the next year) (<https://search.library.duke.edu/search?id=DUKE006531419>)
- **Bloomberg Law\***: January 1937 – present
- **LexisNexis\***: March 1936 - present (updated daily)
- **Westlaw\***: March 1936 - present (updated daily)

### Daily Updates

The Office of the Federal Register publishes the next day's F.R. contents on the **Public Inspection Desk** (<https://www.federalregister.gov/public-inspection>), 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/cgi-bin/wa.exe?A0=FEDREGTOC-L>).

Westlaw, Lexis Advance and Bloomberg Law also offer **alert** setup services, to aid researchers by periodically re-running searches for specific search terms.

## 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*. Each title is revised once a year officially; the cover of each print booklet indicates the date of last revision. Electronic versions are updated more frequently, as described below.

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.

**FDsys** (<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>) provides the official CFR from 1996 to date in a searchable and browseable format. GPO also provides an unofficial, but more current, version called **e-CFR** (<http://www.ecfr.gov/>).

For historical versions of the CFR, **HeinOnline**'s *Code of Federal Regulations* library (<http://db.library.duke.edu/search?id=DUKE003131760>) has all volumes and supplements in PDF from 1938-present.

**ProQuest Regulatory Insight** includes the text of the CFR back to 1997; this database will expand full-text coverage to 1938 over the next year (<https://search.library.duke.edu/search?id=DUKE006531419>). Electronic versions of CFR can also be found on **Lexis.com** 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. **Bloomberg Law and Lexis Advance** include only the current year's edition of the CFR.

## E. UPDATING & TRACKING REGULATIONS

Predicting future proposed regulations can be assisted with the *Unified Agenda of Federal Regulatory and Deregulatory Actions* (also known as the *Semiannual Regulatory Agenda*), a biennial update of planned rules for each agency, along with their justifications and expected timetables. From 1983-2007, the entire *Unified Agenda* was published twice a year in the *Federal Register*, usually in April and October. Beginning in fall 2007, the Unified Agenda became a primarily web-based publication, available at the **Regulatory Information Service Center** (<http://www.reginfo.gov/public/do/eAgendaMain>). The *Federal Register* version of the *Unified Agenda* now contains only "rules which are likely to have a significant economic impact" as well as rules which are required for inclusion by statute. Historic issues of the *Agenda* are available in HeinOnline's *Federal Register* Library (from 1983, via the *Federal Register* printings); FDsys (from 1994); and RegInfo.gov (from 1995).

A number of sources allow users to track **pending** agency regulations, and simplify the comment process. **Regulations.Gov** (<http://www.regulations.gov/>) is the federal government's centralized site for online access to proposed and final regulations, and submission and review of public comments. **RegInfo.Gov** (<http://www.reginfo.gov/public/>) provides various breakdowns of pending agency action, allowing users to view pending actions by rule stage or by agency. Justia offers a **Regulation Tracker** (<http://regulations.justia.com>) which allows searching and updating (via RSS feeds) of regulations from 2005 – present.

Updating changes to final regulations is also greatly simplified online, since electronic versions of the CFR are continuously updated. The most current version of the CFR is the

unofficial e-CFR (<http://ecfr.gpo.gov>), which incorporates new amendments within 1 to 2 days. 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.

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 **FDsys** (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=LSA>) for the years 1997 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. 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 websites; 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.

Official publications from the agencies, such as the *Federal Trade Commission Decisions*, resemble standard court reporters. Table 1.2 of *The Bluebook: A Uniform System of Citation* (Reserve KF245 .U55 2015) lists the official and commercial publications covering administrative adjudications, interpretations, and opinions of the major federal regulatory agencies. 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.

**HeinOnline** (<http://db.library.duke.edu/search?id=DUKE003131760>) has digitized many official sources for administrative decisions in its **U.S. Federal Agency Documents, Decisions and Appeals Library**, with most dating back to volume 1 for the publication. **LLMC Digital** (<http://db.library.duke.edu/search?id=DUKE003350980>), a project of the Law Library Microform Consortium, is another electronic database which includes PDF scans of historical government publications, including agency decisions. Dates of available online collections vary.

Many administrative decisions are available on legal research services such as Bloomberg Law, LexisNexis and Westlaw. These systems have topical databases corresponding to the various areas of law which are subject to agency regulation. Westlaw provides administrative decisions through the database **Federal Administrative Decisions & Guidance (FADMIN-ALL)**; opinions from individual agencies may also be searched in separate databases. On Lexis Advance, view available databases through the path **Browse > Sources > By**

**Jurisdiction > U.S. Federal > Administrative Materials.** On Bloomberg Law, choose **Search & Browse > All Legal Content > U.S. Regulatory & Administrative Content.**

The public website of a particular agency may also contain the full text of its decisions. A list of available agency materials is maintained by the **University of Virginia** at [http://guides.lib.virginia.edu/administrative\\_decisions](http://guides.lib.virginia.edu/administrative_decisions).

Early federal agency publications can also be searched in the **ProQuest Congressional** (<http://search.library.duke.edu/search?id=DUKE002487153>) Executive Branch Documents library, which includes agency decisions and other materials dating from 1789 to 1932.

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://search.library.duke.edu/search?id=DUKE004195287>). Publications from **Bloomberg BNA** are available at <http://www.law.duke.edu/lib/lresources/bna> or through Bloomberg Law (<http://www.bloomberglaw.com>). Older looseleafs in print are available on Level 1 in the Superseded Looseleaf collection.

## VI. CITATORS

When reviewing CFR sections in the research services Westlaw and LexisNexis, links to citing references are provided through the citator services **KeyCite** and *Shepard's*. These services will link to judicial branch opinions and filings, administrative law decisions, and secondary sources which have cited back to the original CFR citation.

## 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.

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. KF70 .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.

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.

**FDsys:** 1994 - present (via *Federal Register*, <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>; available document compilations also listed in next section)  
**LexisNexis, *Federal Register* database\*:** 1936 - present  
**National Archives:** 1945 - 1989 (<http://www.archives.gov/federal-register/codification/>)  
**Westlaw, *Presidential Documents* database\*:** 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)

**FDsys:** <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=CPD> (1993 - present)

**HeinOnline:** <http://db.library.duke.edu/search?id=DUKE003131760> (1965- present; select “U.S. Presidential Library”)

Documents AE 2.109 (1965 - 2000), Level 1

The *Daily 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*

**FDsys:** <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=PPP> (1991 - present)

**HeinOnline:** <http://db.library.duke.edu/search?id=DUKE003131760> (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://db.library.duke.edu/search?id=DUKE003131760> (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://db.library.duke.edu/search?id=DUKE003131760> (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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