Today’s Plan

• Federal Regulatory Research
• California Regulatory Research
Legal Research Process

• Step 1 Brainstorming and Research Planning
• Step 2 Start with Secondary Resources
• Step 3 Work with Primary Sources
• Step 4 Put everything together & enjoy life
Legal Research Process

• Step 1 Brainstorming and Research Planning
• Step 2 Start with Secondary Resources
• Step 3 Work with Primary Sources: cases, statutes, and/or regulatory materials
• Step 4 Put everything together & enjoy life
Need for regulatory research

• An agency is involved: eg., FCC’s regulation on broadcasting fake news
• From a secondary source: 47 C.F.R. 134; 13 No. 8 F.C.C.R. 1689
Need for regulatory research

- There is a governing statute
  - In our example, the 1934 Communications Act
- Heavily Regulated Industries: Tax, securities, labor and employment, immigration, etc.
Secondary Resources

• Research Guides:
  • Recommend secondary resources
  • Information about relevant agencies
  • [http://guides.ll.georgetown.edu/communications](http://guides.ll.georgetown.edu/communications)
Secondary Resources

• Commercial Databases: Browse by industry/practice centers
  • Lexis, Westlaw, and Bloomberg
  • Example: A treatise on regulating cable TV
Primary Sources for Regulatory Research

• Purpose of Legal Research
  • Identify and locate primary sources
  • Types of primary sources
  • Where to find them
  • Understand primary sources
Primary Sources for Regulatory Research

• Deal with many types of primary sources
  • Legislative/Regulatory function – regulations and rules
  • Investigative and enforcement function – citations and licenses
  • Quasi-judiciary function – Decisions and Orders
  • Other Guidance documents- Advisory opinions, statement of policy, manuals, etc.
Primary Sources for Regulatory Research

- Deal with many types of primary sources
  - Sources – APA, Enabling Acts, Regulations, and Agency Websites
The Rulemaking Process

- Authority
  - U.S. Code or Executive Order
- Proposed Rule
  - Federal Register
- Final Rule
  - Federal Register
- Codification
  - Code of Federal Regulations
The Rulemaking Process

- **Codification**: Code of Federal Regulations
- [Agency Guidance]: Publications Vary
- **Agency Decisions**: Publications Vary
- **Judicial Review**: Cases
Primary Sources: Role of Statutes

• Statute/Enabling Act provides statutory authority
• General statutes: APA, FOIA, Government in the Sunshine Act, and Regulatory Flexibility Act, etc.
• https://fas.org/sgp/crs/misc/RL32240.pdf
Primary Sources: Role of Statutes

• Statutes/Enabling Act:
  • Statutory Authority
    • Specific statutes – delegate authority to agencies re: issue regulation and adjudicate disputes
  • Statute → Regulation Parallel Table of Authorities and Rules
    • 47 USC § 228 – Regulation of carrier offering of pay-per-call services
  • Easy access (not official):
    https://www.law.cornell.edu/uscode/text/47/228
Primary Sources: Role of Statutes

• Statutes/Enabling Act:
  • Statutory Authority
  • Regulation → Enabling Statute
    • 47 CFR § 79.1 Closed Captioning of Televised Video Programming
      • Statutory Authority section
Primary Sources: Regulations

• Proposed Regulations or Notice of Proposed Rulemaking
  • **Summary** (including regulatory needs), Date, Public Comment (time, docket no.), text of proposed rule
  • Available in Federal Register only
Primary Sources: Regulations

• [After notice and comment period] Final Rules and Regulations
  • Date (effective date etc.), Preamble (basis and purpose, review of significant alternatives, response to public comments, and reasons for rejection), and Text of final rule.
  • Available in Federal Register
Primary Sources: Federal Register

• Federal Register
• Daily Publication
• Arranged in Chronological Order
• Key content: Notice of Proposed Rulemaking, Proposed Rules, Final Rules + Preamble
Primary Sources: Federal Register

- https://www.federalregister.gov/
- https://www.regulations.gov/
  - By Agency: FCC
  - By dates
  - Keyword search
Primary Sources: Regulations

- Final Rules and Regulations Codified
  - Text of Final Rules
  - Available in Code of Federal Regulations
Primary Sources: CFR

• Code of Federal Regulations
  • Annual Publication
  • Arranged By Topics (50 titles)
  • Final and Current Regulations/Rules
  • Limitation – Most recent changes
    • LIST OF CFR SECTIONS AFFECTED
Primary Sources: CFR


Primary Sources: CFR

• Lexis/Westlaw/Bloomberg:
  • Example: FCC regulation on broadcasting fake news

• Proquest Regulatory Insight:
  • Regulatory history under a specific statute
  • Public comments
Primary Sources: Agency Decisions and Orders

• Out of Agency’s adjudicative function
• Similar to cases
• Binding on parties or public
• Publications really vary: FCC Record
Primary Sources: Agency Decisions and Orders

• Agency website: https://www.fcc.gov/
• Commercial databases: Lexis, Westlaw, Bloomberg and Hein
• Example: Agency decisions based on FCC’s Hoaxes Regulation 47 C.F.R. § 73.1217.
Primary Sources: Judicial Review (cases)

• Jurisdiction – check enabling statute or regulation
  • 47 USC § 402 – Judicial review of FCC’s orders and decisions - US Court of Appeals for D.C
• Commercial Databases: Lexis or WestLaw
  • Citing references or citing decisions feature
  • Example: 47 CFR § 79.1 Closed Captioning of Televised Video Programming
State Regulatory Research

• Similar to Federal Regulatory Research

• Key: Understand the Agency’s rulemaking process and documents issued under each of its functions

• Difficulty – may be harder to track down agency decisions and orders
California Regulatory Research

• Secondary Resources
  • Research Guide – California Legal Research
  • Lexis and Westlaw
  • State focused database: CEB
  • State Bar Journal
California Regulatory Research

- Primary Sources
  - CA Rulemaking Process
    - https://oal.ca.gov/rulemaking_process/
  - Statutes – CA APA
    https://oal.ca.gov/publications/administrative_procedure_act/
  - Regulations
    - California Code of Regulations
    - California Regulatory Notice Register
    - Lexis, Westlaw, and https://oal.ca.gov/
California Regulatory Research

- Primary Sources
  - Agency Decisions and Orders
    - Lexis and Westlaw
    - Agency Websites
Final Tips

• Research Regulatory Materials in Context
  • Likely need to search for relevant statutes and cases
  • Regulatory topics can be complex: may involve multiple statutes, regulations and agencies
Final Tips

• Start with best secondary resources
  • Research guides
  • Browse by practice centers/areas in Lexis, Westlaw and Bloomberg
  • Specialized databases: RIA (Tax), CCH (Tax, Securities Reg., Labor and Employment, etc.)
Final Tips

• Figure out the scope of primary sources
• Rulemaking process & Information about agencies
• Content of each official publication
Final Tips

• Places to find primary sources
  • Lexis, Westlaw, and Bloomberg
  • Official governmental websites
  • Historical sources (esp. for states) - you may need to call or check state archives