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Researching Administrative Law

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LIBRARIES & LEGAL RESEARCH

Researching administrative law

BY KEITH LACY

Administrative law is a broad subject area concerning the laws and procedures governing administrative agencies. It also encompasses the substantive law produced by those agencies — most commonly in the form of regulations (rules) or agency decisions. This article highlights a few major resources for researching administrative law in the United States.

UNDERSTANDING AGENCY AUTHORITY

Administrative agencies have only those powers granted to them through enabling legislation (or implicit to the exercise of said powers.) The U.S. Supreme Court has stated that “an agency literally has no power to act” until authorized by Congress.¹ Michigan law follows the federal system, allowing the legislature to authorize administrative agencies to effectuate legislation.² Depending on the authorization, the exercise of these powers by executive agencies may or may not resemble powers held by legislative or judicial branches such as promulgating regulations or issuing administrative decisions, respectively.

Therefore, it is critical to understand the extent to which the legislature has granted an agency authority in a particular matter. This often requires consulting the enabling legislation underlying and establishing the agency.³ Annotated codes and their electronic equivalents (Westlaw, Lexis+, etc.) can help you identify underlying statutes, but it’s often more efficient to begin research by looking at articles, treatises, and other subject-specific guides discussing the area of regulation. Acquiring a more holistic view of the regulatory landscape early on will make your research more efficient in the long run. Good sources of general reference information on agencies include:

- The U.S. Government Manual (www.usgovernmentmanual.gov), an annually published handbook of the federal government. It contains entries for every federal agency, with descriptions including enabling statutes, organizational changes, and major publications <<https://www.usgovernmentmanual.gov/>>

- While not as exhaustive, the Michigan Manual (legislature.mi.gov?page=MichiganManualSearch2) is a similar reference resource for the Michigan government
- The index to the Code of Federal Regulations (described below) contains a Parallel Table of Authorities and Rules listing rulemaking authority for codified regulations. The index and finding aids are freely available online at GovInfo <<https://www.govinfo.gov/collection/cfr-index?path=/gpo/CFR%20Index%20and%20Finding%20Aids/>>.

LOCATING AGENCY INFORMATION

Agency websites may contain important information such as notices, rules, and agency guidance. Sometimes background research is necessary to identify which agency properly has jurisdiction — or if multiple agencies do. It should be noted that the quality, quantity, and ease of access vary tremendously across different sites.

- USA.gov is an all-inclusive directory for all federal, state, and local government websites. It includes an A-Z listing of federal agencies. <usa.gov>
- State of Michigan – Departments lists websites for the state’s executive agencies and includes links for organizations subject to the Open Meetings Act as well as FOIA processes. <https://www.michigan.gov/som/0,4669,7-192-29701_29702_30045-,00.html>

LOCATING REGULATIONS

Similar to statutes, regulations are collected into subject-specific codes after an initial promulgation in an official gazette. The federal codification is the Code of Federal Regulations (CFR), available both in print and electronically on GovInfo.⁴ The CFR consists of 50 titles and subdivisions published annually on a quarterly update schedule. This quarterly update schedule — which is often subject to publishing delays — inevitably lags behind the frequency with which agencies publish new and updated regulations and creates challenges when attempting to determine the state of the law on a precise date. Fortunately, the National Archives and Records Ad-

ministration and the Government Publishing Office also put out an unofficial version of the code that gives a better idea of the current state of the law. The eCFR is a continuously updated, searchable online version of the CFR incorporating the latest changes from the Federal Register⁵ (more on this below.) Additional functionality was recently added to the website including comparison tools, automatic notifications of changes, and a timeline view.

The Michigan Administrative Code, our state's equivalent to the CFR, is also available in print and online on the website of the Administrative Rules Division of the Department of Licensing and Regulatory Affairs.⁶ Searching the online version requires knowing the relevant department and bureau to locate the proper rule section.⁷ An annual code supplement published online includes helpful finding aids.⁸ The online version is updated on the effective date of each new rule.⁹

HISTORICAL RESEARCH AND CURRENT AWARENESS

During the "Hot Oil" cases litigated during President Franklin D. Roosevelt's New Deal legislation — and the massive proliferation of regulations accompanying it — the U.S. Justice Department found itself before the Supreme Court in the embarrassing position of trying to enforce a rule against oil companies that didn't technically exist.¹⁰ The incident highlighted the need for a uniform system of publicizing issuances by federal agencies. First published in 1936, the Federal Register (FR) contains notices of proposed and final agency rules as well as presidential materials such as executive orders. Notably, the FR publication of a rule includes a preamble that gives insight into the agency's thought process in rulemaking, including summaries of comments received and the agency's response. These materials, which are not included in the CFR, give important insights into the agency's rationale and interpretation of the law. A complete listing of historical FR issues can be found on the GovInfo regulatory information section.¹¹

The FR is also an important resource for keeping current on the latest agency guidance and likely areas for future regulation. [Federalregister.gov](https://www.federalregister.gov) is an unofficial version of the FR that groups each issue's filings by type and subject category, making it easy to see at a glance the latest developments in a particular area. The site also offers email alerts. Historical coverage extends back to 1994, and the official text is linked to when available.

Michigan's equivalent, the Michigan Register, is published bi-monthly in print and online.¹² Publication began in 1984; issues prior to 2000 are available at law libraries and online at the Library of Michigan.¹³ While usually published in the Michigan Register, recent executive orders may not appear right away — fortu-

AT A GLANCE

Understanding the extent to which the legislature has granted an agency authority in a matter is critical, and often requires consulting legislation underlying and establishing the agency.

nately, the Michigan Legislature maintains an archive of orders with links to the governor's website containing the most recent orders.¹⁴

ADMINISTRATIVE LAW DECISIONS

Compared to locating regulations and executive orders, accessing adjudicative actions by agencies is considerably more difficult. Agency websites may contain decisions; the University of Virginia Library maintains a very helpful research guide for federal administrative decisions accessible through agency websites.¹⁵ If unavailable, the agency may at least describe the reporters or commercial publishers that collect the decisions. A list of frequently cited looseleaves and commercial reporters can be found on table T15 of *The Bluebook: A Uniform System of Citation* (21st Ed) (Cambridge: Harvard Law Ass'n, 2020).

A few Michigan-specific databases of hearings and decisions include:

- DSTARs Decision Database, Michigan Civil Service Commission, (https://www.michigan.gov/mdcs/0,4614,7-147-6877_24245-,00.html) [<https://perma.cc/2F6V-N9FW>];
- Attorney General Opinions 1963-Present, Michigan Department of the Attorney General (<https://www.ag.state.mi.us/opinion/opinions.aspx>) [<https://perma.cc/8VW4-RJNX>];
- Michigan Tax Tribunal Decisions, Michigan Department of Licensing and Regulatory Affairs (<https://www.michigan.gov/taxtrib/0,4677,7-187-38250-,00.html>) [<https://perma.cc/8KYF-RHZH>];
- Michigan Employment Relations Commission Case Decisions, Michigan Department of Labor and Economic Opportunity (https://www.michigan.gov/leo/0,5863,7-336-94422_17485_68147-387366-,00.html) [<https://perma.cc/KS78-NB3Y>].

FURTHER RESEARCH

For a few good general treatments of administrative law, the following resources may be helpful:

- Koch, *Administrative Law and Practice* (Third Ed) (Eagan: Thomson Reuters, 2021).

- Stein, *Administrative Law* (Newark: Matthew Bender & Co, 2021).
- LeDuc, *Michigan Administrative Law* (Eagan: Thomson Reuters, 2020).
- Eisner et al, *Contemporary Regulatory Policy* (Third Ed) (Boulder: Lynne Rienner Pub, 2018).



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ENDNOTES

- 1 Louisiana Pub Serv Comm v FCC, 476 US 355, 374; 90 L Ed 2d 369; 106 S Ct 1890 (1986)
- 2 Coffman v State Bd of Examiners in Optometry, 331 Mich 582, 589; 50 NW 2d 322 (1951)
- 3 LeDuc, *Michigan Administrative Law* (Eagan: Thomson Reuters, 2020), §§ 1:7-1:10, p 18
- 4 Code of Federal Regulations (Annual Edition), govinfo.com <<https://www.govinfo.gov/app/collection/cfr>> [<https://perma.cc/R5XK-LHDZ>]. All websites cited in this article were accessed November 6, 2021.

5 Code of Federal Regulations: A point in time eCFR system, National Archives <<https://www.ecfr.gov/>> [<https://perma.cc/FN34-UW87>].

6 Administrative Rules, Mich Dep't of Licensing and Regulatory Affairs <https://www.michigan.gov/lara/0,4601,7-154-89334_10576_92306-,00.html> [<https://perma.cc/7B8J-LYU6>].

7 MI Administrative Code, Mich Dep't of Licensing and Regulatory Affairs, ARS <<https://ars.apps.lara.state.mi.us/AdminCode/AdminCode>> [<https://perma.cc/HE56-3MXZ>].

8 Annual Administrative Code Supplement, Mich Dep't of Licensing and Regulatory Affairs, MOAHR <https://www.michigan.gov/lara/0,4601,7-154-89334_10576_92306_92312-494260-,00.html> [<https://perma.cc/AM4R-P9ZV>].

9 Using the Michigan Administrative Code, Mich Dep't of Licensing and Regulatory Affairs, MOAHR <https://www.michigan.gov/lara/0,4601,7-154-89334_10576_92306_92313-494249-,00.html> [<https://perma.cc/ZGM6-9CCR>].

10 Feinberg, Mr. Justice Brandeis and the Creation of the Federal Register, 61 Pub Admin Rev 359, 360 (2001).

11 Federal Register, govinfo.com <<https://www.govinfo.gov/app/collection/fr>> [<https://perma.cc/A98Y-J383>].

12 The Michigan Register, Mich Dep't of Licensing and Regulatory Affairs <https://www.michigan.gov/lara/0,4601,7-154-89334_10576_92306_92312_92359-,00.html> [<https://perma.cc/3XHP-SSZU>].

13 Michigan Administrative Law Materials, Library of Mich Digital Repository <<https://cdm16110.contentdm.oclc.org/digital/collection/p16110coll2/search/searchterm/michigan%20register/field/title/mode/exact/conn/and>> [<https://perma.cc/L2TV-QK28>].

14 Executive Orders, Mich Legislature <<http://legislature.mi.gov?page=ExecutiveOrders>> [<https://perma.cc/LF4Z-275N>].

15 Hosticka, Administrative Decisions, Library, University of Virginia <https://guides.lib.virginia.edu/administrative_decisions> [<https://perma.cc/Y93D-M84E>].