Legal Research 7:

ADMINISTRATIVE LAW & DECISIONS

Three Branches of Government

Judicial



Executive Legislative





Sources and Types of Law

- Judicial (Judges and Courts)
 - Common Law (Judge-made Law)
 - Opinions issued by Courts
- Legislative (Congress & State Congresses)
 - Statutes enacted by elected bodies
- Executive (President and Agencies)
 - Executive Orders and Directives from President)
 - Rules and Regulation from administrative agencies, such as Department of State

National Do-Not-Call Registry (1)

- Between 5-2002 and 4-2003, FTC and FCC proposed: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, 68 FR 16250-01, 47 CFR Part 64
- 7-25-2003, FTC, Final Rule: 47 CFR Parts 64 and 68 (Effective 8-25-2003)
- 9-23-2003, <u>U.S. Security v. F.T.C.</u>, W.D.Okla., 10th
 Cir. Ct.: FTC did not have the authority
- 9-25-2003 Congress introduced & passed HR 3161 to ratify FTC's authority

National Do-Not-Call Registry (2)

- 9-25-2003, afternoon <u>Mainstream Marketing</u>
 <u>Services, Inc. v. F.T.C.</u>,
 the District Court of Colo., Judge Nottingham, J., held
 that: regulations relating to **do-not-call registry** violated First Amendment free speech protections
- 10-07-03, the U.S. 10th Circuit Court of Appeals granted the FTC's request to stay the order of the above Court that halted enforcement of the National Do Not Call Registry. Accordingly, the FTC will move forward with implementing and enforcing the registry.



Mainstream Marketing Services, Inc. v. F.T.C., 358 F.3d 1228 (10th. Cir. 2004)

- Holdings: The Court of Appeals of 10th. Circuit Judge, held that:
 - (1) regulations did not violate First Amendment; and
 - (4) FTC had statutory authority to promulgate regulations.
- Mainstream appealed to the Supreme Ct. Certiorari Denied by 543 U.S. 812, 125 S.Ct. 47 (Oct 04, 2004)

National Do Not Call Registry

Due to the Government shutdown, we are unable to offer this website service at this time. We will resume normal operations when the government is funded.

Debido al cierre del gobierno no podemos ofrecer este servicio telefónico en este momento. Nosotros reanudaremos el funcionamiento normal cuando el gobierno este fianciado.

Administrative Regulations: developing and publishing

GENESIS - NEW DEAL
 U.S. v. Smith, 293 U.S. 633 (1934)
 Panama Refining Co. v. Ryan, 293 U.S. 388 (1935)

resulted in:

- 1. Federal Register Act, Ch. 417, 49 Stat. 500 (1935) to publish Federal Register (FR)
- 2. Ch. 369, 50 Stat 304 (1937) to amend the Federal Register Act and create Code of Federal Regulations (CFR), which was first published in 1938
- 3. Administrative Procedure Act, Ch. 324, 60 Stat. 237 (1946), expand the scope of FR



Federal Register AVAILABILITY

- Issued daily Monday to Friday found in most law libraries and public libraries
- Online
 http://www.gpo.gov/fdsys/browse/collection.ac
 tion?collectionCode=FR
 since 1994; can limit to
 specific sections, PDF format, published by GPO,
 free
- LEXIS FEDREG file 1980-
- WESTLAW FR database 1980-

FR CONTENTS

- 1. Presidential documents (proclamations, executive orders)
- 2. Rules and regulations (documents having general applicability and legal effect)
- 3. Proposed rules (text of proposed regulations, agency agendas, and notices of hearings); it is also available online at http://www.regulations.gov/fdmspublic/component/main
- 4. Notices (announcements of application deadlines or license revocations)



FR CONTENTS: Proposed Rule Changes

- PREAMBLE
- Why changes being considered
- Name of pertinent agency staffers; those responsible for responding to inquiries
- Citations to studies
- Agency policy statements
- Discussion of comments received
- Descriptive statements on agency organization



FR Contents: Regulation Changes

- CFR Parts Affected in that day's issue
- Cumulative list of CFR parts affected during the current month
- Reminders section
 - Rules going into effect that week
 - Comments due the next week
 - List of Public Laws



- OFFICIAL INDEX
 - Daily
 - January-July
 - Annual

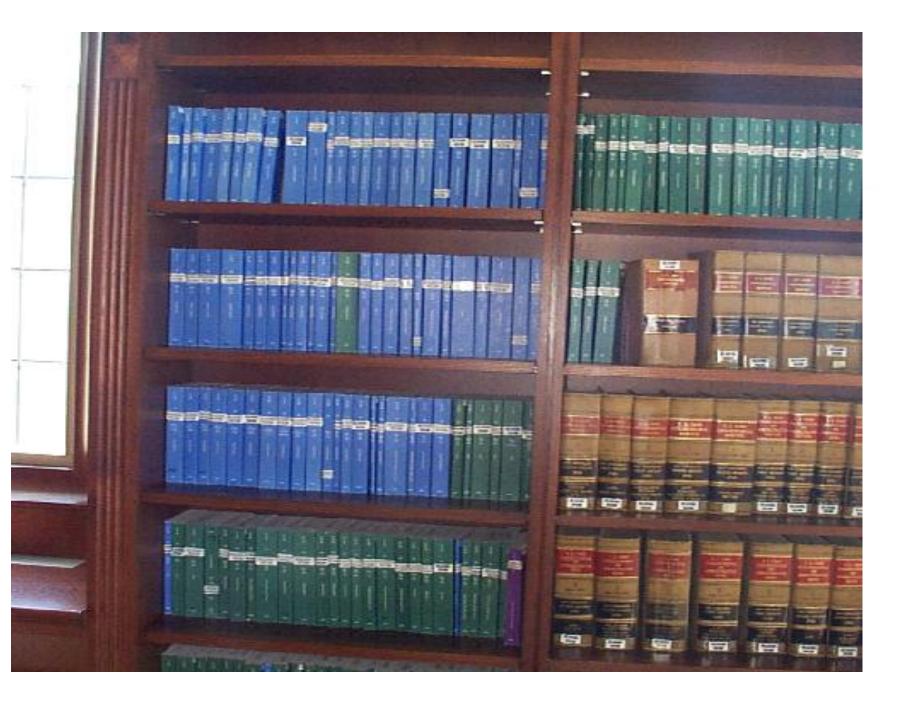
Who read FR daily?

 Most likely: some editors of major legal publishers, such as West, Lexis, BNA, CCH to update their federal regulation databases, treatises, etc.



CFR: Code of Federal Regulations

- All the federal regulations published in FR have been codified & updated into CFR so we can conduct current federal regulatory research more effectively
- This is where you start federal administrative law research
- First published in 1938 v. Federal Register published in 1935
- Now Over 200 volumes



CFR Arrangement

Subject arrangement of 50 titles

- Somewhat similar but do not always correspond to USC; Instead of grouping rules together by subject, CFR groups agencies together by subject

EACH TITLE

- Divided into chapters
 - Chapters are divided into parts
 - Parts into sections

USC v. CFR

- Title 1, General Provisions
 Title 2, The Congress
 - Title 3, The President
- Title 4, Flag and Seal, Seat of Government, and the States
- Title 5, Government
 Organization and Employees;
 and Appendix
- Title 6, Home Security
- Title 7, Agriculture
- Title 8, Aliens and Nationality
- Title 9, Arbitration
- Title 10, Armed Forces; and Appendix
- Title 11, Bankruptcy; and Appendix
- Title 12, Banks and Banking

- Title 1—General Provisions
- Title 2—[Reserved]
- Title 3—The President
- Title 4—Accounts
- Title 5—Administrative Personnel
- Title 6—Home Land Security
- Title 7—Agriculture
- Title 8—Aliens and Nationality
- Title 9—Animals and Animal Products
- Title 10—Energy
- Title 11—Federal Elections
- Title 12—Banks and Banking



CONTENTS of CFR

- Full text of final regulation or rule
- Authority note: USC or Statutes at Large
- Source note: Refers to page in Federal Register where rule or regulation first appeared



Federal Communications Commission

§ 64.1

Subpart U—Customer Proprietary Network Information

47

64.20 L Busic and Language. 64.20 3 Definition.

64.2005 Use of customer proprietary network information without customer approval.
64.2007 Approval required for use of customer proprietary network information.

64.2008 Notice required for use of cus proprietary network information.
64.2009 Safeguards required for use o tomer proprietary network informa

Subpart V—Telecommunications C Systems Security and Integrity Pu to the Communications Assistant Law Enforcement Act (CALEA)

64.2102 Definitions.

64.2103 Policies and procedures for employee supervision and control.

64.2104 Maintaining secur and accurate records.

64.2105 Submission of pol proce-

Source: 28 FR 13239, Dec. 5, 1963

(CALEA)

64.2200 Purpose.

64.2201 Scope.

64.2202 Definitions.

64.2203 Capabilities that must be provided by a wireline telecommunications carrier. 64.2501 Scope of limitation.

64.2502 Effect of state law or regulation.

Subpart AA—Universal Emergency Telephone Number

64.3000 Definitions.

64.3001 Obligation to transmit 911 calls.

Authority: 47 U.S.C. 154, 254(k), ... Public Law 104-104, 110 Stat. 56,

NATIONAL SECURITY
AND EMERS REPAREDNESS (NSEP)

AUTHORITY: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

SOURCE: 28 FR 13239, Dec. 5, 1963, unless otherwise noted.

Subpart A—Traffic Damage Claims

§64.1 Traffic damage claims.

(a) Each carrier engaged in furnishing radio-telegraph, wire-telegraph, or ocean-cable service shall

CFR: Publishing

QUARTERLY PUBLICATION CYCLE

Titles 1-16 as of January 1

Titles 17-27 as of April 1

Titles 28-41 as of July 1

Titles 42-50 as of October 1

ONLINE AVAILABILITY

HeinOnline: 1938-

• LEXIS – CFR: 1981- (updated weekly)

• WESTLAW - CFR: 1984- (weekly)

• GPO Access:1997-

http://www.access.gpo.gov/nara/cfr

CFR Access

- General Index
- By agency in back of each CFR volume
- Cross references provided in the notes following USCA and USCS

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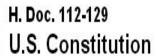


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■ Title 1 - General Provisions Parts 1 - 500. January 1, 2012.

■ Title 2 - Grants and Agreements Parts 1 - 5800, January 1, 2012.

■ Title 3 - The President Parts 100 - 102, January 1, 2012.

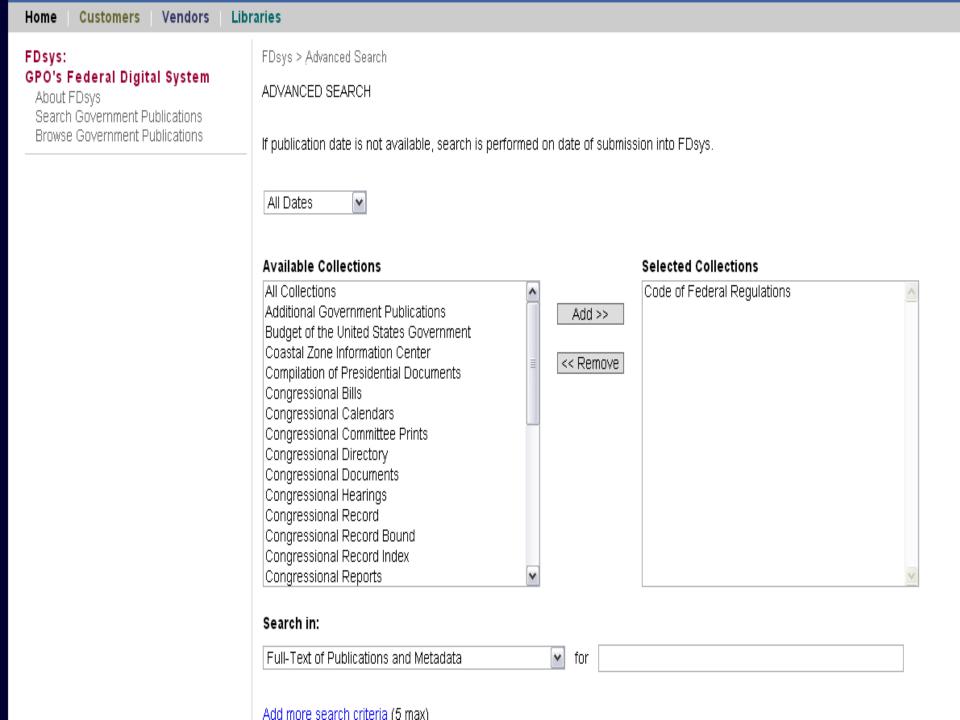
■ Title 4 - Accounts Parts 2 - 202. January 1, 2012.

🔣 🖿 Title 5 - Administrative Personnel

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	■ Part 205 - REVOCATION OF APPROVAL OF PETITIONS	PDF XML More
	■ Part 207 - ADMISSION OF REFUGEES	PDF XML More
	■ Part 208 - PROCEDURES FOR ASYLUM AND WITHHOLDING OF	DDE LVML I Moro



CFR Update: List of Section Affected (LSA)

1. CHECK

- (1) The Last Month's List of CFR Sections Affected
 - Lists changes since the latest annual revision
 - Includes brief notes listing the nature of the change, added, removed, or revised
 - Remember the scope varies from title to title because the various titles are updated at different times during the year
- (2) The Current List of CFR Section Affected
- (3) List of CFR Parts Affected Today

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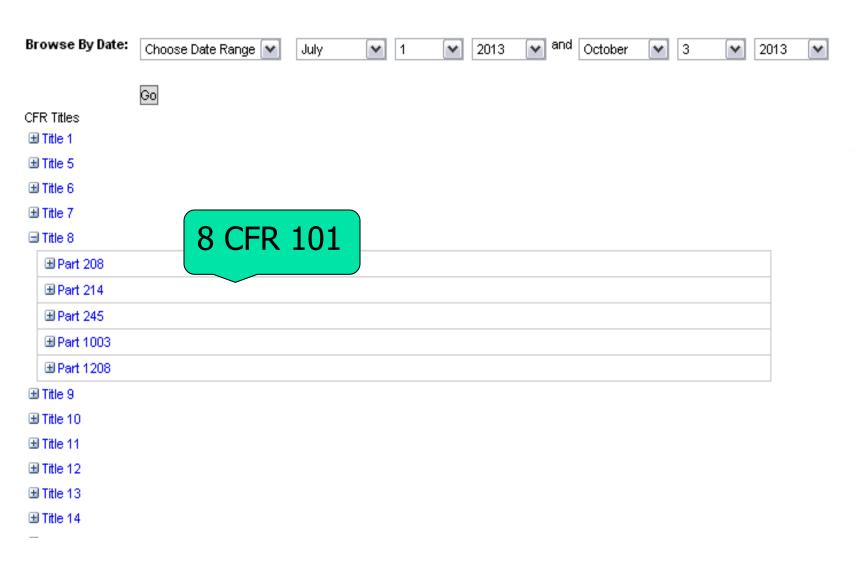
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Agency Policies & Manuals

- Supplement regulations with manuals and policy statements
 - often provide illustrations
- Examples
 - Internal Revenue Manual, T 22.2/15-3
 - (Equal Employment Opportunity Commission) EEOC Compliance Manual, Y 3.Eq 2:8 Eq 2
- Now more readily available online because of the Electronic Freedom of Information Act Amendments of 1996, 110 Stat. 3048.
 - Applies only to records created since 11/1/96.



Agency Policies & Manuals Continued

- Best place to locate is within a specialized loose-leaf service or the Government Agency's Website, such as:
 - KF4819 .G6 1988, Gordon, Charles, 1905-,
 Immigration Law and Procedure
 - http://www.irs.gov/irm/





DETENTION OPERATIONS MANUAL

TABLE OF CONTENTS

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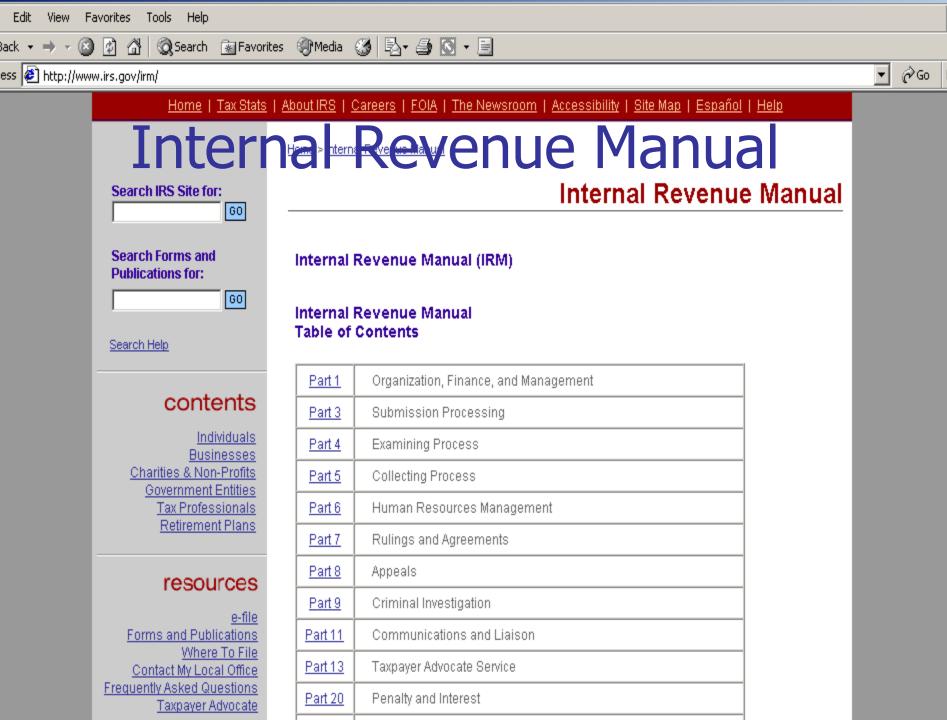
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INTRODUCTION

- Agencies also determine matters dealing with specific parties
- Decision-making processes vary greatly from agency to agency
- Issue a wide variety of documents varying degrees of authority, e.g. Internal Revenue Service Regulations, Revenue Rulings, Private Letter Rulings



Agency Decisions –2-

PUBLICATION - OFFICIAL

- Over two dozen agencies publish opinions
- Wide variation in scope and timeliness
- Most issue slip opinions first
- Have limited indexing

PUBLICATION - UNOFFICIAL

- Many agencies do not publish their decisions
- Commercial publishers step in, such as, West, Lexis, BNA,

Agency decisions -3-

Online Publications

- WESTLAW more than 75 boards, agencies & departments
- LEXIS FEDAGN ABOUT 60
- Web based growing due to the Electronic Freedom of Information Act Amendments of 1996

Best Web Site Portals

- http://www.lib.virginia.edu/govdocs/fed_decisions agency.html
- http://www.lib.lsu.edu/gov/index.html



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Administrative Decisions & Other Actions - By Agency

Administrative Decisions & Other Actions - By Subject

This page is not an attempt to link to Federal Register or the Code of Federal Regulations information for each federal agency. It links to other administrative actions which are outside the scope of the CFR or the FR. What is available via the Internet varies from agency to agency. See also Regulations.gov for regulatory materials.

Because Electronic FOIA Reading Rooms often contain administrative information this page links to the primary E-FOIA Reading Room for each agency covered.

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Administrative Decisions & Other Actions - by Subject

Banking & Finance	Consumer Protection	Business & Economic Development
Defense	Drugs	Education
Elections	Employment & Labor	Energy
Environment	Farms & Farming	Foreign Affairs
Forestry	FOIA Reading Rooms	Food Safety
Government, generally	Health	Homeland Security
Housing	Immigration	Intellectual Property
Justice	NASA	Postal Service
Social Security	Tax	Telecommunications
Trade	Transportation	Veterans

Agency Decisions -4-

HARDCOPY SOURCES

- Loose-leaf sources
- United States Code Service: summaries
 - 50 Commissions & Boards
 - 12 Departments
 - 20 Independent Agencies
- Specialized Reporters



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Shepard on Lexis or

Keycite on Westlaw

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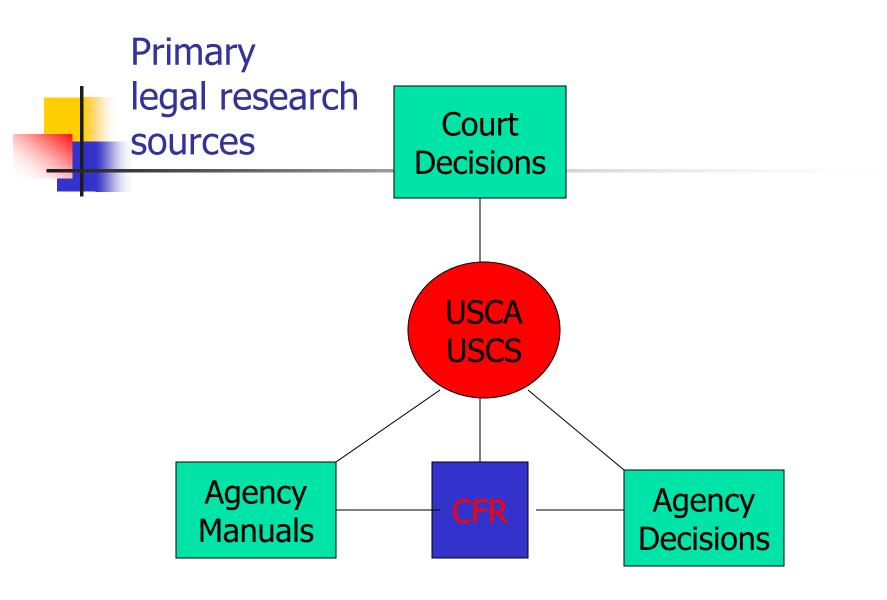
A typical agency description includes a list of officials heading major operating units, a summary statement of the agency's purpose and refederal Government, a brief history of the agency, including its legislative or executive authority, and a description of its programs and act and information, addresses, and phone numbers to help users locate detailed information on consumer activities, contracts and grants, expublications, and other matters of public interest.

The Manual is published as a special edition of the Federal Register (see 1 CFR 9.1). Its focus is on programs and activities. Persons interdetailed organizational structure, the regulatory documents of an agency, or Presidential documents should refer to the Federal Register (its other special editions. FDsys contains the U.S. Government Manual for 1995-96 and all subsequent editions to the present. The new ethe Manual is available to the Public each year in the late summer. Documents are available as ASCII text and Adobe Portable Document For (PDF) files. About United States Government Manual.



2012 Edition (December) Edition

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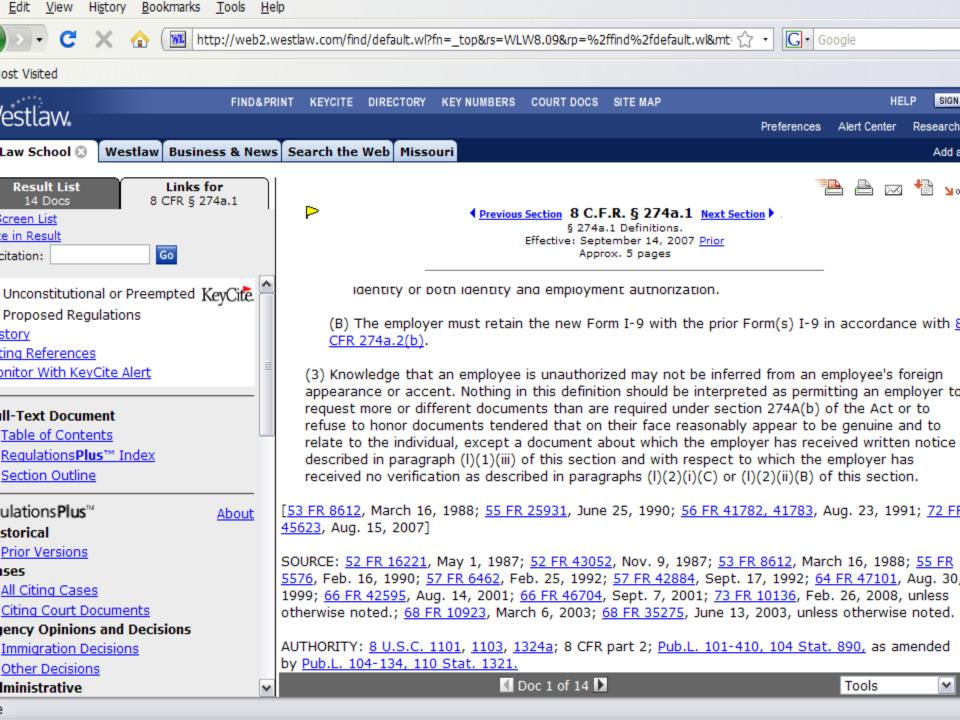


Sample Research: Question

 A foreign fourth year undergraduate student from Wash. U. Computer S. Department has a job offer from a local software company and comes to your office to ask you to apply for a working visa for him. This student has obtained a few MS authorized software engineer certificates from various workshops.

Sample Research: Path 1

- CFR Index: looking for subject terms (available on Westlaw too)
 - Aliens
 - Employment
 - Control of employment, 8 CFR 274a, 8
 CFR 1274a
 - Labor certification process for permanent employment, 20 CFR 656
 - Labor condition ...H-1B ... 29 CFR 507



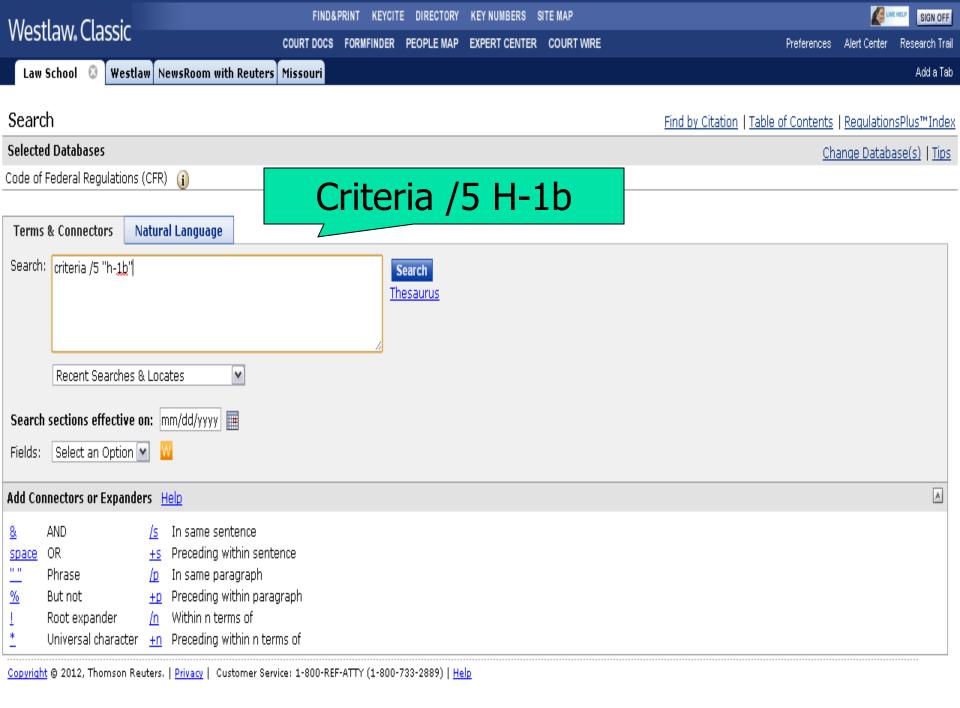


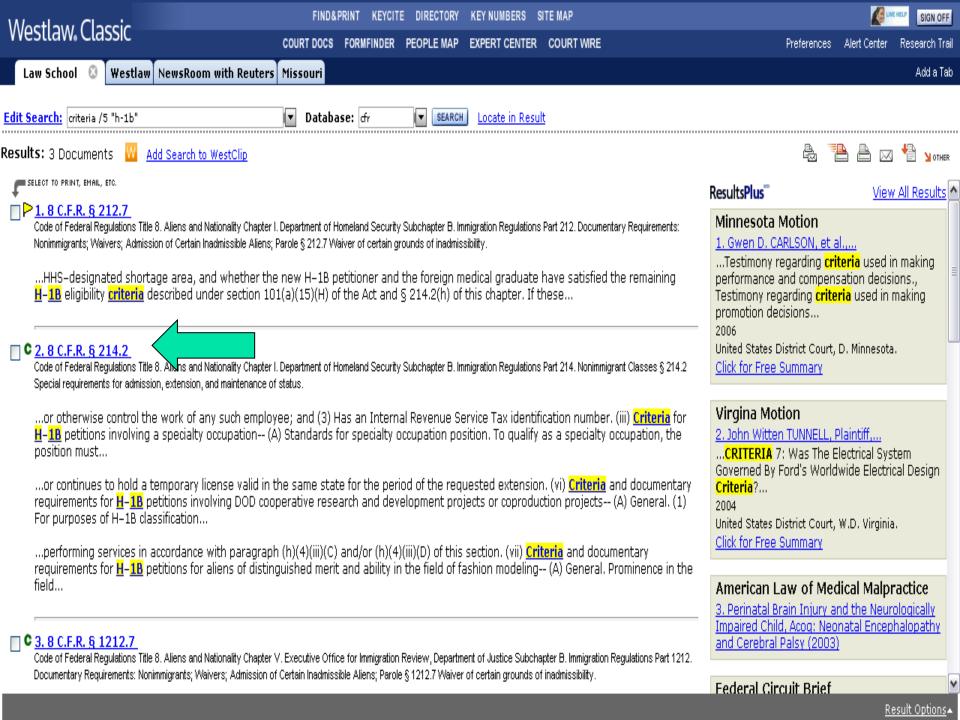
Sample Research: Path 2 & 3

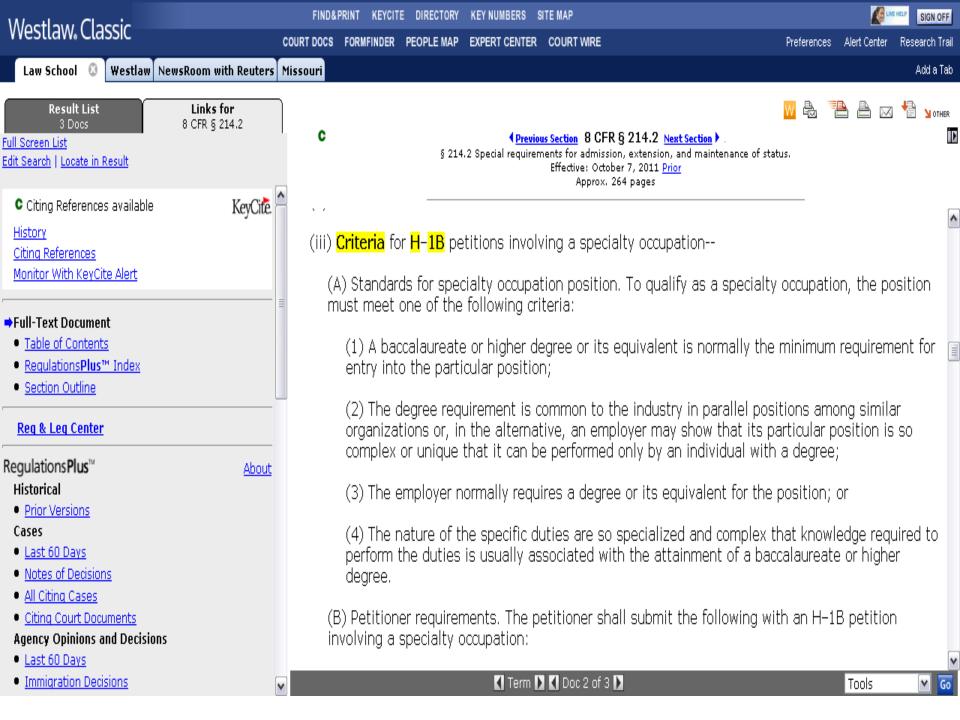
- Path 2: Keyword search CFR database on Westlaw or Lexis
 - Pick a database: CFR
 - criteria /5 "H-1B"
- Path 3: USCS Index
 - Aliens
 - Employment
 - Labor & Employment, 8 USC 1101, 1103, 1324a

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§ 1103. Powers and duties of the Secretary, the Under Secretary, and the Attorney General Effective: December 22, 2009

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Use USCA or USCS to look for relevant judicial decisions.

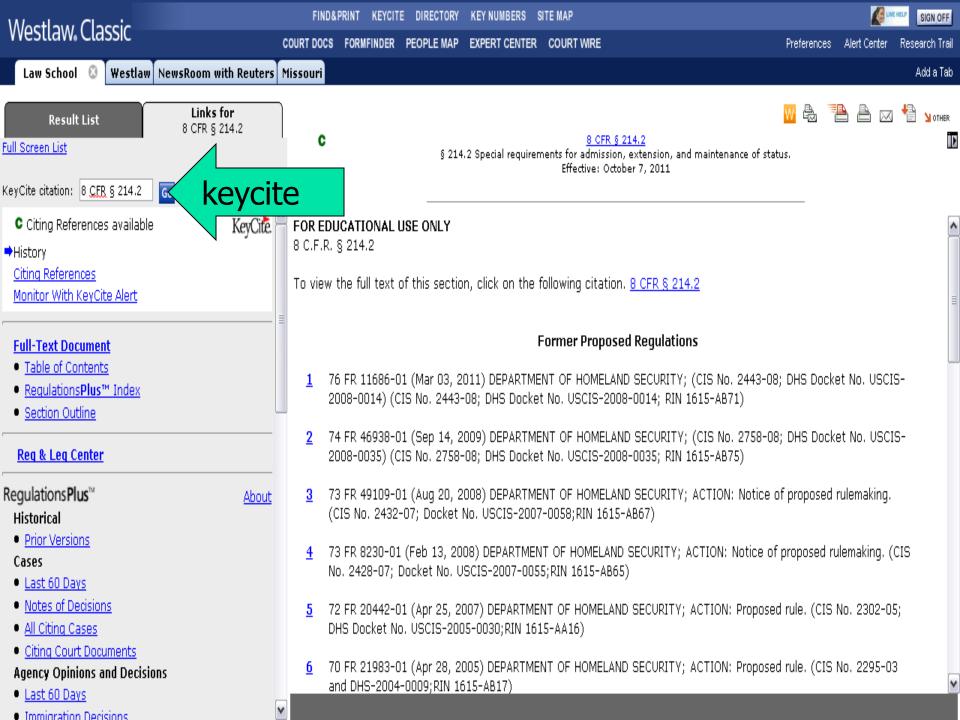


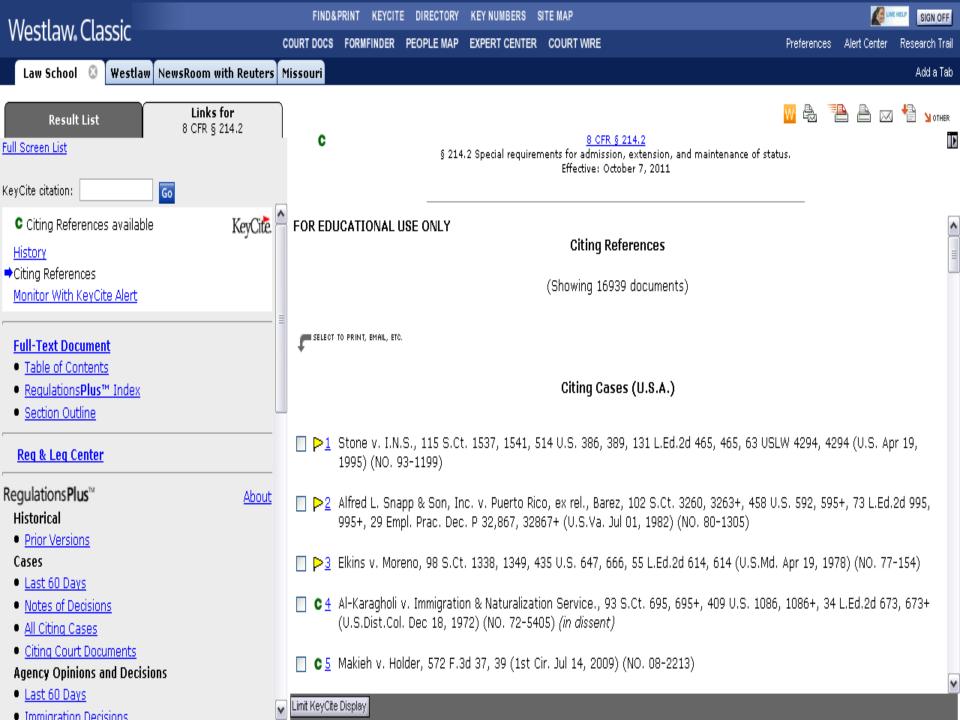




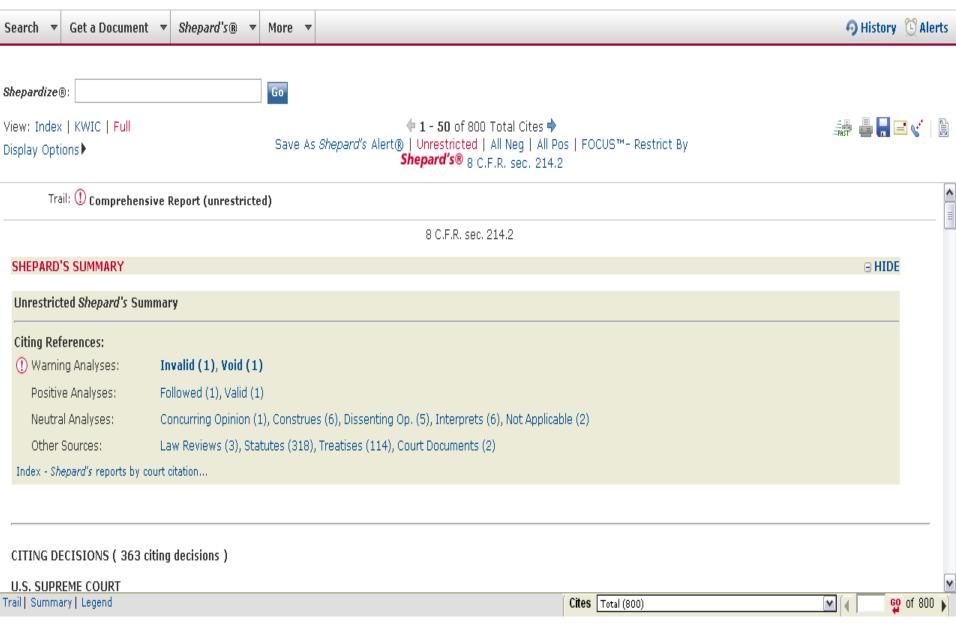
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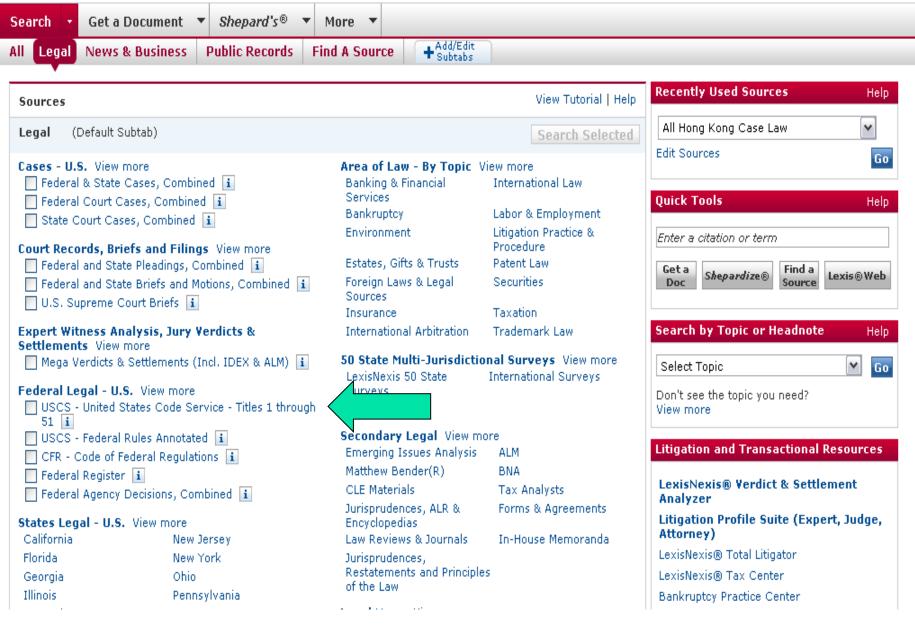


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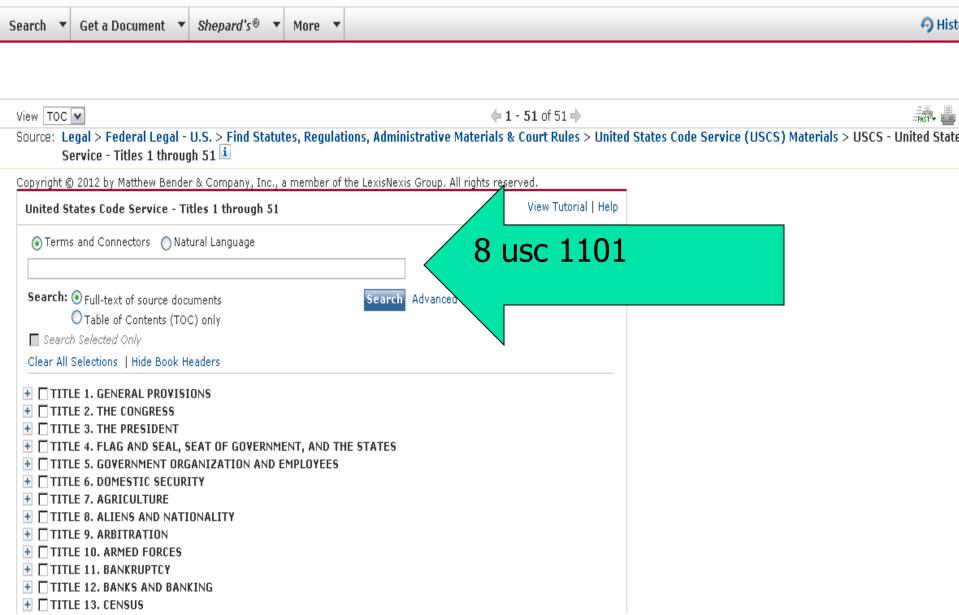
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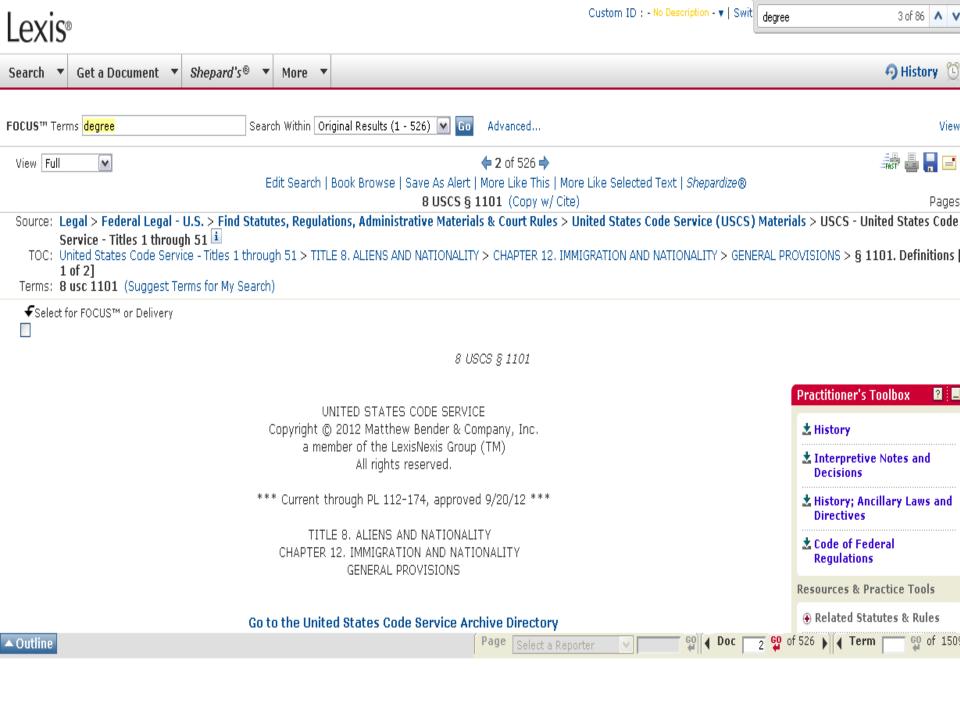
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 - Aliens
 - Employment
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	<u>practice as professionals.</u> Case law also accommodates	Pages:				
manecha dranauos v Holder (2005, CRIO) 2005	those instances where individuals attain professional					
_	standing through directed experience and specialized					
🕇 20. Profession	instruction recognized by appropriate professional bodies as					
Administrative assistant was not profession with	a form of preparation for the practice of particular	nigration &				
Naturalization Service (1971, CA9) 446 F2d 51.	professions; e.g., "reading" law. <u>In re Portugues Do Atlantico</u>					
8 USCS § 1101(a)(32) includes teachers within	Information Bureau, Inc. (1984, Comr) 19 I & N Dec 194.	ıs revocation of third				
preference visa petition on behalf of Korean choir director/piano teachers where evidence established that beneficiary was professional, and that petit						
needed professional music teacher to serve Korean parishioners. Full Gosperarch v Thornburgh (1988, DC Dist Col) 730 F Supp 441.						
Occupation may be considered profession within meaning of 8 USCS § 1101 where attainment of baccalaureate degree is minimum requirement for entry into occupation. In re Desai						
(1980, Regional Comr) 17 I & N Dec 569.						
Individuals lacking particular degree normally prerequisite to professional practice in their fields of endeavor may be classified as professionals in rare instances where they occupy						
clearly professional positions, have substantially completed normal education requirements for position they occupy, and are recognized and permitted to practice as professionals;						
professional position is one which requires standard in at least baccalaureate level of university education for practice in which education is applied, and which requires extensive autonomous application of individual professional knowledge to particular fact situations. In re Portugues Do Atlantico Information Bureau, Inc. (1984, Comr) 19 I & N Dec 194.						
accombinious application of marvidual professional knowledge to particular fact situations. In te rortugues by Atlantico Information bulleau, Inc. (1904, collin) 19 1 & N Dec 194.						
₹ 21. Residence						

△ Outline Select a Reporter V Doc 2 00 of 526 V Term 00 of 1509

Term "residence" within definition of 8 USCS § 1101(a)(33) is not equivalent of domicile, and is not determined by that intangible and sometimes elusive concept. Chan Wing Cheung



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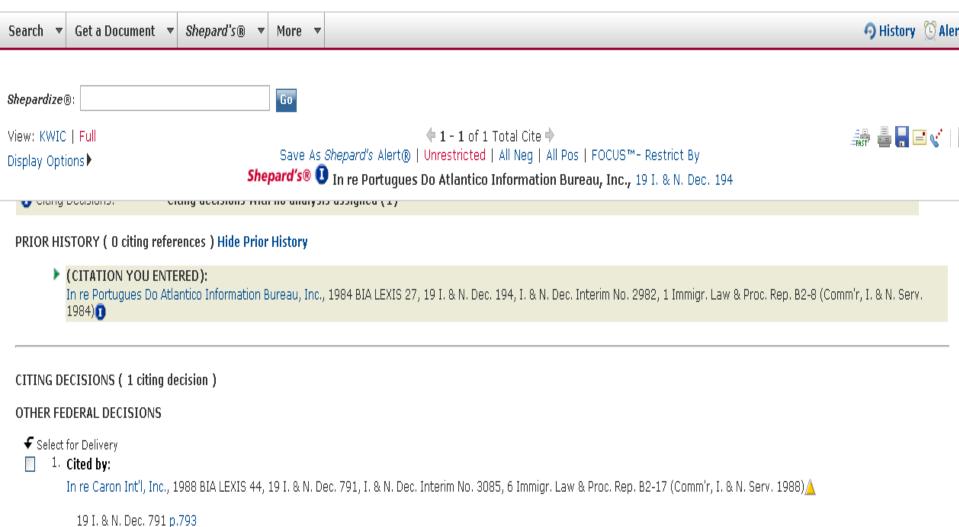
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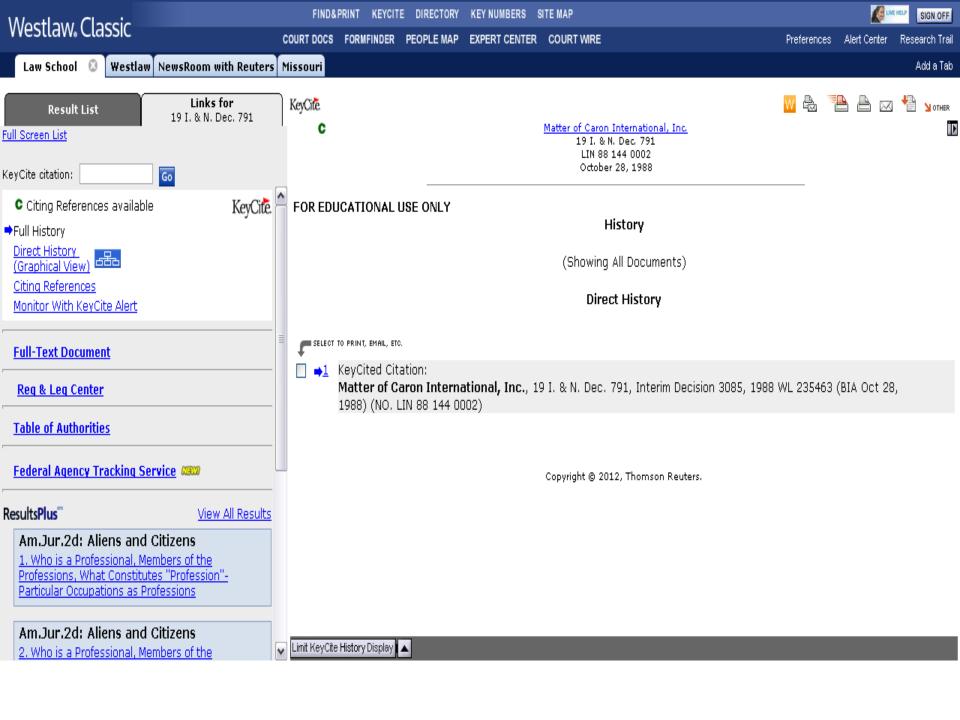
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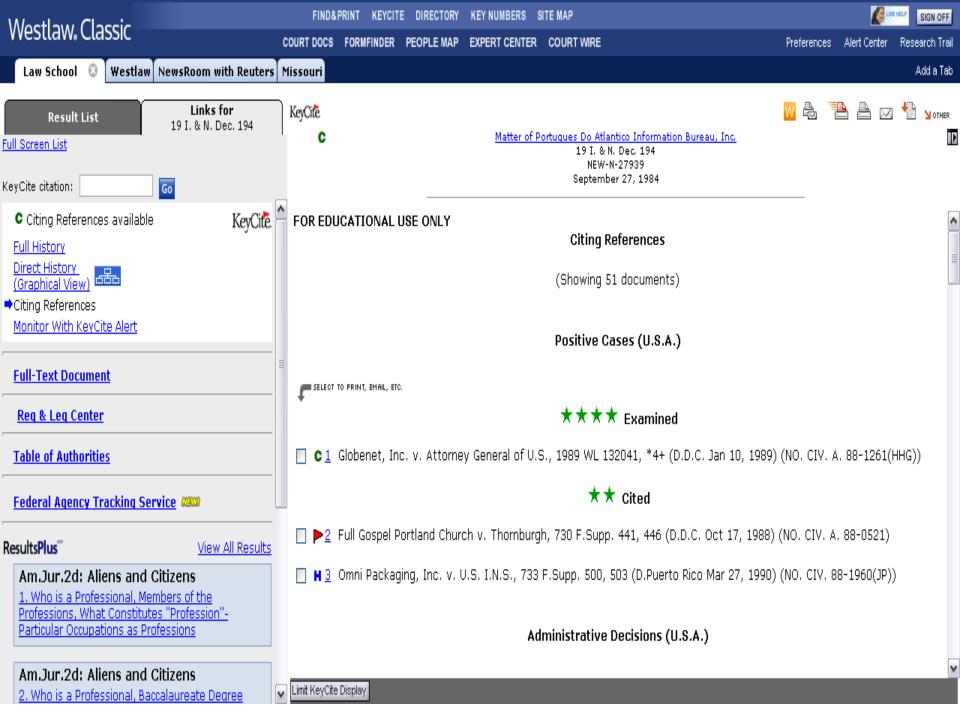
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- Bluebook Rule 14
- For example: 8 CFR § 274a (date)



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- 1. The Easiest Path
 - Find a good treatise on your subject
- 2. The Second Easiest Path
 - Westlaw or Lexis
- 3. A Free but Hard Path: GPO Access
- 4. The Hard but Sometimes Good Path
 - CFR Index or CIS Index to the CFR
 - USCA Index or USCS Index
 - Looking for CFR references