



ADMINISTRATIVE LAW

WEEK THREE
Tuesday, Sept. 7, 2021
Professor Julia M. Glencer

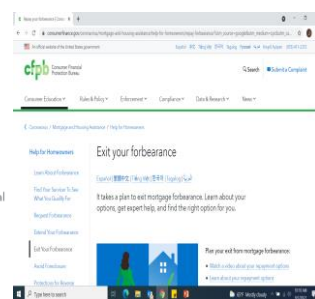
AGENDA for WEEK THREE

- 6:00 to 6:30 Expertise as Hard-Wired into the Admin State
- 6:30 to 7:15 Learning from the Steamboat Reading
- 7:15 to 7:25 ----- Break -----
- 7:30 to 7:40 Set-Up for Case File Exercise
- 7:40 to 8:20 Case File for **Rule-Making** Body (FAA)
- 8:20 to 9:00 Case File for **Adjudicatory** Body (FMSHRC)

Consumer Financial Protection Bureau (CFPB): WHAT IS THIS THING???



cfpb Consumer Financial Protection Bureau



THREE READINGS

- Excerpt from Wagner, *Place for Agency Expertise* article
- *National Labor Relations Board (NLRB) v. Hearst Pubs, Inc.*, 322 U.S. 111 (1944).
- Historical Reading on Steamboats

EXPERTISE

“[T]he basic concept that the **agencies should preside over specialized information** is hard-wired into the design of the administrative state[.]”

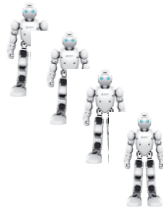
Wagner, *A Place for Agency Expertise*, at 2023.

How that “expertise” is perceived and respected has evolved.

CONGRESS OFTEN CREATES SKELETAL ACTS



OURS IS A VAST, DIVERSE LAND IN AN INCREASINGLY COMPLEX WORLD



STARTING POINT?

- The New Deal Era (1930's)
- The Birth of the Interstate Commerce Commission (1887)
- The early days of the United States Government (1789 . . .)

First Congress created admin agencies (in this order):

First Model (very dependent on the Executive Branch)

- **Department of Foreign Affairs** (first Cabinet Dept. 1789 – first structural model)
- **Department of War** (second Cabinet Dept. – followed first structural model)

Second Model (more independent of the Executive Branch)

- **Department of Treasury** (executive Dept. – second structural model)
- **Post Office** (followed second structural model)

HISTORY

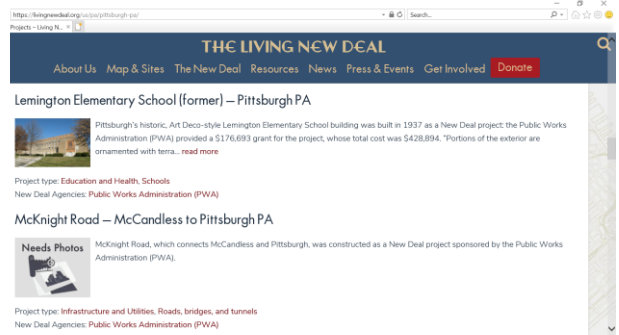
International Commerce Commission (ICC)

- Created via Interstate Commerce Act of 1887
- Originally regulated railroads & their shipping rates
- Re-purposed over time to regulate “common carriers”
- Abolished in 1995; authority spread to other admin agencies
- Said to be first independent, *highly specialized* admin agency armed with authority via the U.S. Const's Commerce Clause to regulate private conduct in the public interest



HISTORY

- So-called **Alphabet Agencies** created during the **New Deal** era of the 1930's
- Upwards of 69 new agencies created during President Roosevelt's term of office
- Many created through the National Industrial Recovery Act (gave President \$\$ to allocate without Congressional approval needed)
- FCC, FDIC, FLSA, FHA, SSA, NLRB . . .
- Many USSC opinions implicating these admin agencies & their authorities
- Some created via Executive Order, including Works Progress Administration (WPA)



NLRB v. Hearst (U.S. 1944)

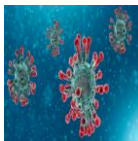
- “The Wagner Act is federal legislation, **administered by a national [administrative] agency**, intended to solve a national problem on a national scale . . .”
- The task of deciding how to define “employee” as used in the Wagner Act “**has been assigned primarily to the [administrative] agency created by Congress to administer the Act.** Determination of ‘where all the conditions of the relation require protection’ involves inquiries for the Board charged with this duty. **Everyday experience in the administration of the statute give it familiarity . . . The experience thus acquired must be brought frequently to bear on the question of who is an employee under the Act.**”

- “[W]e are to defer to the FAA “especially in areas of **agency expertise such as aviation forecasting**[.]” *City of Mukilleo v. U.S. Dep’t of Transp.*, 815 F.3d 632, 637 (9th Cir. 2016).
- “The FAA’s expertise in **forecasting air transportation demand and airfield capacity** are areas where courts accord significant deference.” *City of Olmsted Falls, OH v. F.A.A.*, 292 F.3d 261, 272 (D.C. Cir. 2002)
- “The FAA acted within its discretion, and exercised its **technical expertise, in using fuel sales to estimate annual operations at the airport.**” *Informing Citizens Against Runway Airport Expansion v. FAA*, 757 F. App’x 568, 570 (9th Cir. 2018).

Crews, “If Federal Regulators Aren’t Experts, The Entire Administrative State Is Suspect,” *FORBES* (June 10, 2019)

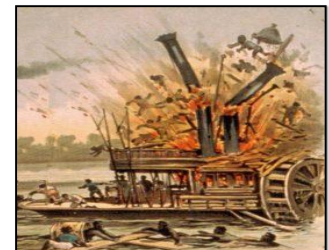
Stolberg, et al., “C.D.C. Test Counting Error Leaves Epidemiologists ‘Really Baffled,’” *NEW YORK TIMES* (May 22, 2020).

Linnane, “Coronavirus Update: Health Experts Express Alarm At CDC Change In Testing Guidelines That Exclude Asymptomatic Patients,” *MARKET WATCH* (Aug. 26, 2020).



REGULATING STEAMBOATS:

Watching Congress Build Expertise into An Admin Agency



NOTECARD

Identify something from the steamboat reading that caught your attention:

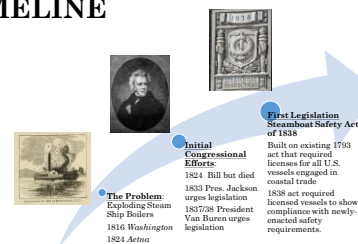
BIG PICTURE PATTERNS . . .

- Identifying a problem & agitation for regulation
- Initial Congressional effort, followed by useful Criticism & suggestions
- New & improved Congressional effort, which created a "Robot" armed with *expertise* and considerable *discretion*
- Watching how information was gathered & fed into the regulatory regime to expand and improve it
- Watching the Robot expand & maintain its relationship with Congress
- Watching the impact of science
- Watching the impact of court review (*but not really . . .*)

REGULATING STEAMBOATS

- Congress launched "an **innovative, indeed downright modern**" regulatory enterprise to govern steamboat safety thought to be "innovative along three dimensions" –
- **Legal dimension:** Innovative because it **wielded national commerce power** to regulate matter of personal safety usually relegated to state police power
- **Scientific dimension:** Innovative because it **pioneered regulation** motivated by & based on advances in **scientific understanding**
- **Administrative dimension:** The Board of Supervising Inspectors (and the hierarchy eventually built beneath it) was totally new in 1852, yet it foreshadowed the "independent regulatory commissions built in the New Deal Era of the 1930's and the health & safety regulatory regimes built in the 1960's & 1970's."

TIMELINE



STEAMBOAT SAFETY ACT OF 1838

- **Two Basic Requirements**
 - **Rudimentary Inspection Requirement:** Steamboat owner/master required to get vessel inspection each year AND boiler inspection every 6 months (\$5/\$5)
 - **Employment Requirement:** Steamboat owner/master required to employ competent, experienced engineer to run the vessel.
- Relied on **appointed "inspectors"** (did not create or use admin agency)
- **Enhanced existing civil & criminal penalties** as method of promote safety
 - **Fines** for failure to have certificate & license
 - Failure to have engineer equated to *liability* for damages occasioned by burst boiler
 - **Manslaughter prosecution** if life lost due to misconduct, NEGL, inattention
 - Failure of steam engine was prima facie evidence of NEGL = strict liability regime.
- **Bounty system** for reporting infractions

The screenshot shows a news article from a website with a navigation bar (Home, About, News, Editorial, Opinion, Features, FAQs, Contact) and a search bar. The article is titled "Big Win for Whistleblowers in Fourth Circuit" by Ben Kostyack on May 1, 2020. The text reports that on April 30, 2020, U.S. District Court Judge Tanya Walton Pratt issued a \$69.6 million judgment against the defendants in the high-profile qui tam False Claims Act case *U.S. ex rel. Chempurkov, et al. v. biofuels, LLP, et al.*. The article explains that the case was triggered by whistleblower disclosures of the then 21-year old Alexander Chempurkov regarding fraudulent transactions in the renewable energy biofuels industry. Chempurkov's case developed into the largest environmental and securities fraud cases in Indiana history, was highlighted in the CBS tv show "Whistleblower," and resulted in successful fraud and securities prosecutions by the government. A sidebar on the right contains a search bar, a list of topics (CFTC, Whistle, IRS, Whistle, False Claims, Foreign Co, Governor, Whistleblo, Whistleblo, Coronaviru, Whistleblo), and an archives section.

“These strategies failed. Death, injury, and property loss from bursting boilers continued to plague steamboat travel . . .”

MASHAW, CREATING, at 190.

Edmund Burke, Commissioner of Patents, identified reasons for that failure in a **Report to Congress** in 1848 . . .



TIMELINE



“Federal safety regulation was about to take on entirely new forms.”

MASHAW, CREATING, at 192.

CRITICISM OF FIRST LEGISLATION

- District judges didn't know how to appoint qualified inspectors.
- Vessel & boiler inspection combined two different areas of expertise.
- Race to the bottom for inspectors seeking \$5 fees (treated by owners as useless, bothersome “tax” on their business).
- Required Engineers needed to be professionalized via training & exam.
- Penalties were dysfunctional (juries wouldn't convict for manslaughter, strict liability regime drove away worthy proprietors, leaving the more irresponsible).
- The only piece of “scientific” regulation – i.e., leave the valve open – seemed to be precipitating explosions.

“Congress . . . decided to build an *expert regulatory agency*, one that reflected the increasing application of scientific method to both public and private pursuits in the mid-nineteenth century.”

- Mashaw, CREATING, at 195 (emphasis added).

STEAMBOAT SAFETY ACT OF 1852

- Dictated important **design & performance requirements** based on emerging scientific consensus, including max. operating load for boiler pressure and hydrostatic testing at set levels.
- Created an admin agency: **Board of Supervising Inspectors**.
- Use of preventative regulatory controls, not incentive-based deterrents.
 - Primary threat now failure to obtain/maintain a license



Board of Supervising Inspectors

- Each Supervising Inspector oversaw **9 licensing districts**.
- The Supervising Inspectors (aided by judge of district court & customs collector) appointed & supervised “local inspectors” of hulls, boilers.

- “**Local Inspectors**” paid annual fee/licensing fees went to Treasury
- Local inspectors” acted individually & as a board within their districts:
 - Licensed engineers and pilots of all steamers carrying passengers.
 - Heard complaints of NEGL/incompetence of engineers/pilots.
 - Had authority to compel witness attendance & take testimony under oath.
- Local Inspectors had *measure of discretion to implement vague standards* –
 - Acting individually, they could allow reduction of boiler pressure if constructed of materials making normal pressure imprudent.
 - Acting as a board, they licensed an engineer if he was “a suitable and safe person to be entrusted with the powers & duties of such a station” and a pilot if he possessed the “requisite skill, and is trustworthy & faithful.”

- Board of Supervisors** exercised “administrative authority” over the Local Inspectors:
- Heard appeals from certain actions of the local inspectors acting as boards:
 - For example, revocation of vessel certificate or pilot license
 - Local inspector board required to state their reasons for the action in writing
 - Exercised “rule-making” authority
 - Created rules for their own activity & that of local inspector boards
 - Created rules for safety with vessel passing (COL-REGS)
 - Gathered information:
 - All aspects of construction, equipment & navigation
 - Fed into Reports to Congress

VERY MODERN “ROBOT”

“The Board-dominated regulatory regime constructed by the 1852 Steamboat Safety Act was a semi-autonomous bureaucratic enterprise – *one designed to apply expert knowledge* . . . [It] combined the multimember structure, single industry focus and licensing/adjudication features of Progressive and New Deal regulatory Commissions with the rule-making capacities of later health & safety regulators like OHSA, NHSTA, and EPA.”

– Mashaw, *CREATING*, at 194 (emphasis added).



GROWING EXPERIENCE

- **At its first meeting, Board took numerous steps:**
 - Exercised the authority to determine its own “districts”
 - Adopted *rules* to govern its own procedures
 - Appointed two *committees*
 - One to create rules for local boards
 - One to create rules for master/pilots (rules of pilotage)
 - Created and adopted *forms*
 - Prompted Sec. of Treasury to do his Act-assigned tasks (hydrostatic pump assembly)
 - Asked Attorney Gen question about its own power vis-a-vis regulation of the number of passengers on steamships

GROWING EXPERIENCE

- **At its next few meetings, the Board (as it gained experience & identified needs) took more steps:**
 - Adopted *rules* to govern action of local boards.
 - *Amended rules* on pilotage.
 - After seeing issues with *uniformity* of licensing pilots, adopted rule requiring endorsement from every local board thru which vessel passed on a journey.
 - Took in *information* & continuously fine-tuned its rules.
 - Started to issue *interpretations* of its own rules.

GROWING EXPERIENCE

- Board of Supervising Inspectors gave its first *Report* to Secretary of Treasury
- Report full of *statistics*
 - Hundreds of vessels inspected/thousands of pilots & engineers licensed.
 - Accidents & property loss on the decline.
 - Reported how those initially opposed to the regulatory regime (owners, captains, pilots, engineers) now embracing virtues.
 - Reported how insurance companies using inspection/licensure to make decisions on insurability of steamers.

RELATIONS WITH CONGRESS

- After a year, Board started to propose amendments to the 1852 Steamboat Safety Act
- Urging addition of another Supervising Inspector (Pacific)
- Urging coverage of originally exempt class (ferryboats, freight boats, tug boats)
- Urging higher pay for local boards
- Board itself drafted amendatory language
- Also conferred with certain Congressional subcommittees, submitted reports upon request & lobbied for/against legislation

GROWING EXPERIENCE

- **Over time, Board's procedures became more formalized**
 - Established host of *standing committees* dedicated to handling certain specialized subjects (i.e., the creation of the annual report, regulations, pilot rules, firefighting equipment, etc.)
 - Demanded more *standardized reports* from its local boards
 - Submitted more formulaic Reports to Sec. of Treasury & Congress
 - By 1857, had substantial *inventory of rules* (for local boards and for regulated entities), necessitating an index
 - Issued its own *interpretations* in form of *circulars*
 - More formalized responses to petitions, requests for rules & offers of inventions pertinent to steamboat technology (recommended or not)

FOLDING IN THE "SCIENCE"

- The 1852 Act contained many technological provisions that seem to trace back to the **"first partnership between the federal government and a scientific institution."**
- Sec. of Treasury read a newspaper account of proposed research on the cause of steam boiler explosions & gave **Franklin Institute** a \$1500 budget to pursue the research & report.
- Research disproved many of the standard hypotheses; showed that *violent explosions could occur without sudden increase in pressure.*
- Still, U.S. laws less informed on "science" than French laws in effect since 1823 & prompted more by public outcry than science.

FOLDING IN THE "SCIENCE"

- ***Idealized vision of the relationship among science, technology & public policy:*** We want science to lead to technological application and we want public policy to both (1) encourage new scientific knowledge and technological development and (2) limit harmful side-effects.
- ***Reality?*** An "uneasy relationship" whereby public policy can "retard, ignore, distort or imagine science almost as often as it supports uses of good science to develop effective, cost-beneficial regulatory policy."

RESULTS . . .

- **Reports:** "[T]he Supervising Inspectors larded their annual reports with statistics on the number of accidents, their causes, lives lost and property destroyed."
- "[315] deaths out of a total passenger carriage of 3.6 million suggests that steamer had become a relatively safe mode of transport."
- **Publicity:** "[T]his] data was publicized by an always interested press."
- **Beneficial Outgrowth:** "[O]wners of steams not covered by the [Act] were requesting inspections because it had been demonstrated to be in their own interest. There were even requests for inspections of locomotives and . . . [a refusal to] employ engineers who had not been licensed."

- Mashaw, CREATING, at 205.

INFLUENCE OF THE COURTS?

- Very minimal influence in *this* historical era.
- A few favorable interpretations of the 1852 Act by federal courts upholding Board/local board activity against challenge.
- Perhaps decisions were sparse because U.S. Attorneys pursued few prosecutions for violations of the 1852 Act.
- **THAT** means that the beneficial results which did occur were largely driven by *operation of the administrative regime* itself.

FINAL THOUGHT . . .

- Moving forward, keep your eyes open for the influence of administrative agency **expertise & experience** on –
 - How the admin agency is structured.
 - What it is authorized/expected to do.
 - How it acts (internally & externally).
 - How the other branches treat it/how it interacts with them.
 - What courts say about expertise in dealing with admin agencies
 - How legal admin law doctrines rely on or reject expertise.
 - What you think of it (is it properly influential or overblown?)

BREAK TO 7:25 p.m.



ADMINISTRATIVE LAW

WEEK THREE
Thursday, Sept. 10, 2020
Professor Julia M. Glencer

ADMIN AGENCY ACTIVITIES



“Congress generally assigns agencies a wide array of roles and responsibilities.” ADMIN LAW at 216.

Two General Activities

- Rule-making
- Adjudication

More Specific Activities

- Provide benefits
- Generate information
- Issue & monitor licenses
- Award grants
- Manage their own internal operations
- Gathering certain info



Rulemaking

Adjudication

Constitutional distinction based on “procedural due process” underlies this categorization and was fed into the Administrative Procedure Act.

WE DO KNOW . . .



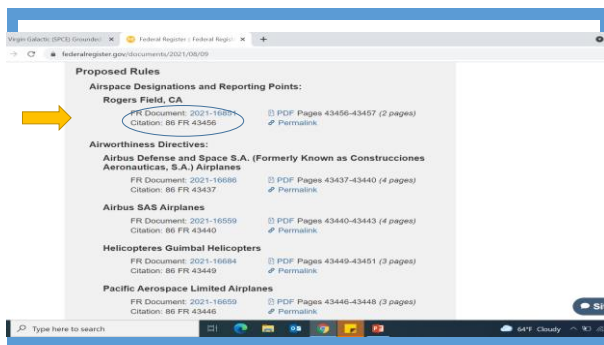
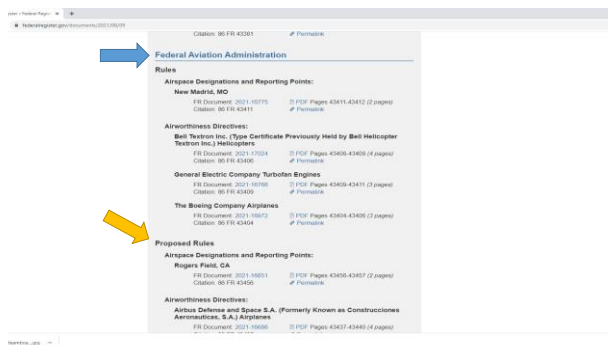
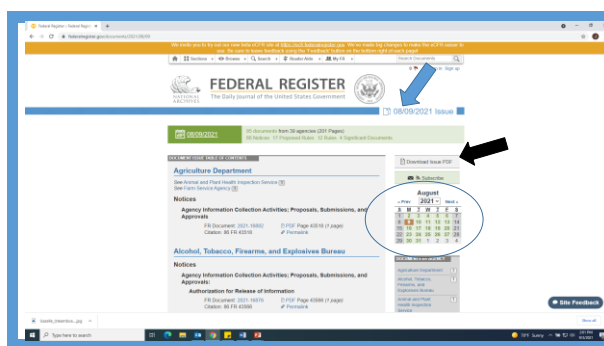
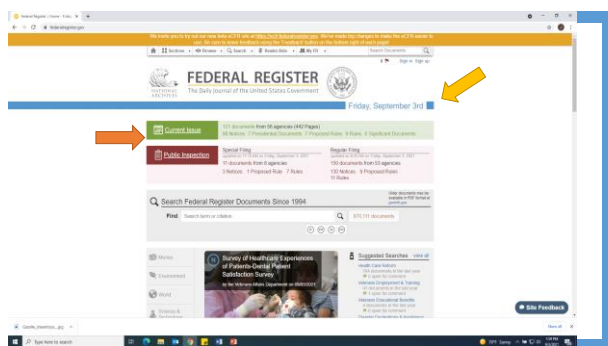
- What *organic & enabling* acts/statutes are (and we reviewed “how a bill becomes a law” in the U.S. & “legislative history”)
- That admin agencies are typically structured in a *hierarchy*
- That admin agencies, depending on their authority –
 - sometimes issue “rules” that look like statutes
 - sometimes issue “decisions” that look like judicial opinions
- What the Federal Register & the C.F.R. are

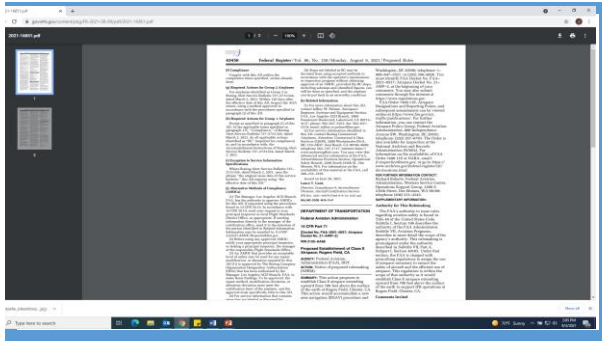


CASE STUDY: Federal Aviation Administration (FAA) Rule-Making

CASE STUDY: FAA

- **Representative** Notice of Proposed Rule-Making (a.k.a. NPRM) published in the **FEDERAL REGISTER** on Thurs., Aug. 9, 2021.
- **Organic Act & Hierarchy**
- Mission and **Expertise**: Airspace Designation
- *In the news . . .*

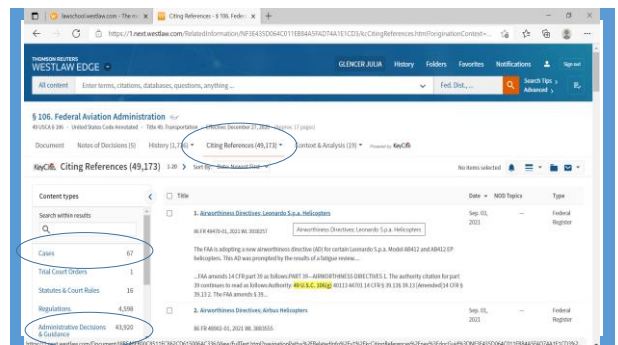
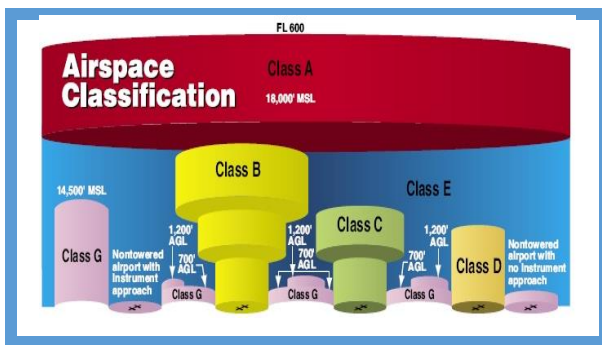


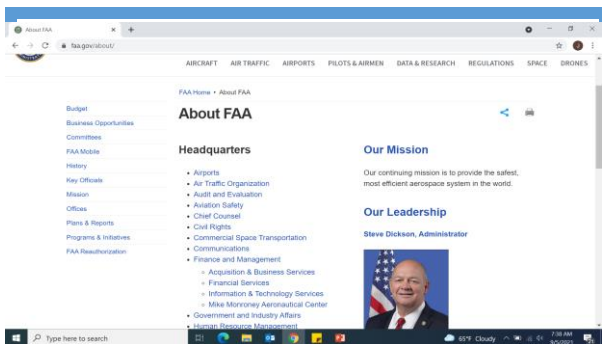
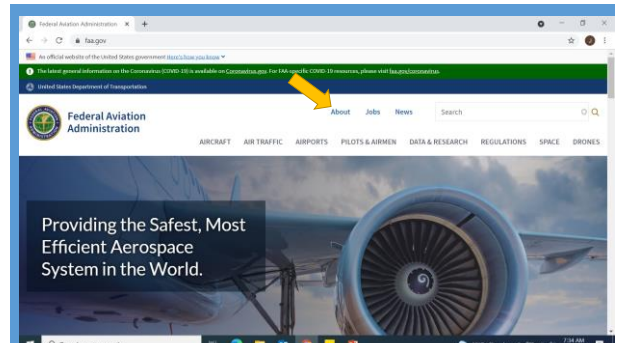



AS YOU READ THE NPRM . . .

- Observe:
 - the **format** and how it tries to assist you, the reader
 - all of the **cross-references**
 - the info given for the FAA's **authority** to make this rule
 - the solicitation of, and the info provided for, **comments**
 - the references to Executive Orders & other regulatory acts
 - the actual **text of the proposed rule** and where it appears
 - the little embedded **dates & codes**

ROGERS FIELD AIRPORT, CHESTER, CA







Federal Aviation Administration

Our Mission:

Our continuing mission is to provide the safest, most efficient aerospace system in the world.

Our Vision:

We strive to reach the next level of safety and efficiency and to demonstrate global leadership in how we safely integrate new users and technologies into our aviation system. We are accountable to the American public and our aviation stakeholders.


Federal Aviation Administration

Our Values:

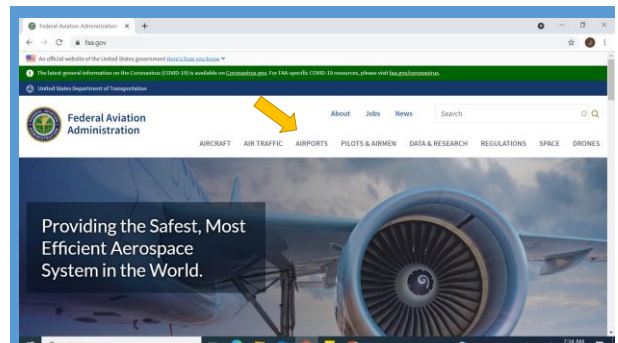
Safety is our passion. We work so all air and space travelers arrive safely at their destinations.

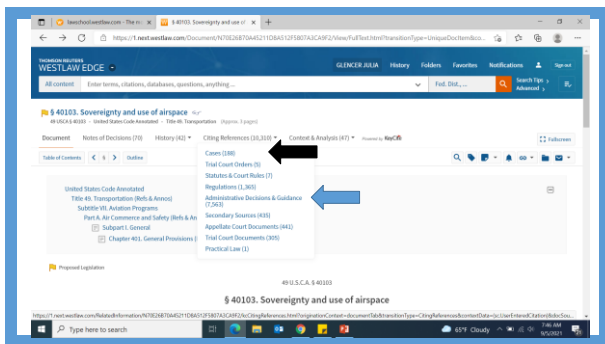
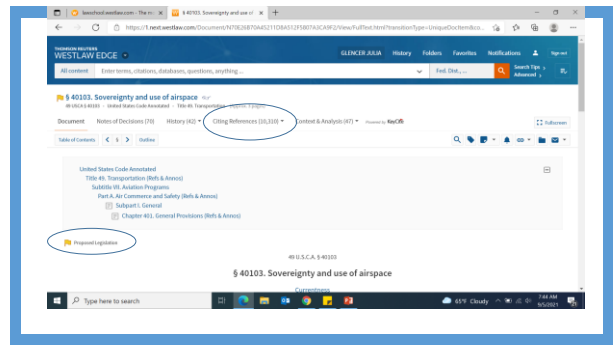
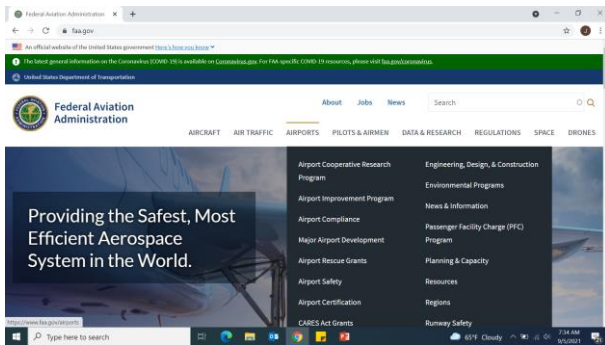
Excellence is our promise. We seek results that embody professionalism, transparency and accountability.

Integrity is our touchstone. We perform our duties honestly, with moral soundness, and with the highest level of ethics.

People are our strength. Our success depends on the respect, diversity, collaboration, and commitment of our workforce.

Innovation is our signature. We foster creativity and vision to provide solutions beyond today's boundaries.





- “[W]e are to defer to the FAA “especially in areas of **agency expertise such as aviation forecasting**.”]” *City of Mukilteo v. U.S. Dep’t of Transp.*, 815 F.3d 632, 637 (9th Cir. 2016).
- “The statutes and regulations clearly give the FAA authority to establish **minimum requirements for aircraft equipment**. The determination that the particular type of autopilot involved here is not required in the interests of safety is well within the scope of the agency’s expertise and is not challenged here.” *Air Line Pilots Ass’n, Int’l v. FAA*, 454 F.2d 1052, 1054 (D.C. Cir. 1971).
- “The FAA’s expertise in **forecasting air transportation demand and airfield capacity** are areas where courts accord significant deference.” *City of Olmsted Falls, OH v. F.A.A.*, 292 F.3d 261, 272 (D.C. Cir. 2002)
- “The FAA acted within its discretion, and exercised its **technical expertise, in using fuel sales to estimate annual operations at the airport.**” *Informing Citizens Against Runway Airport Expansion v. FAA*, 757 F. App’x 568, 570 (9th Cir. 2018).

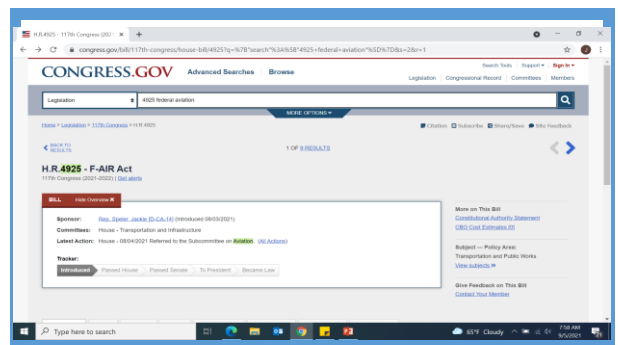
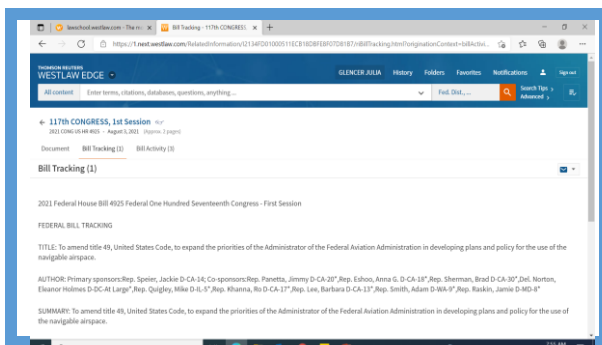
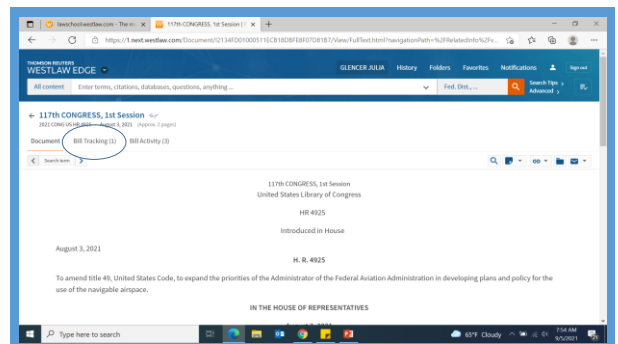
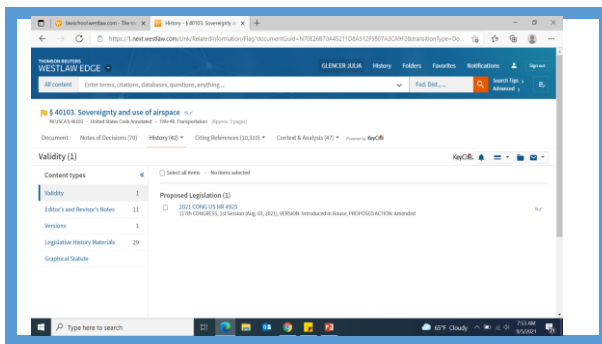
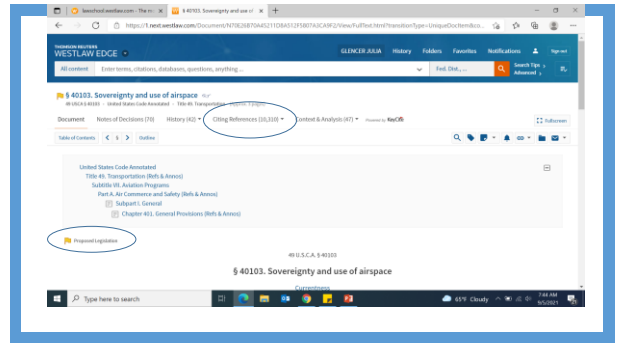
“Courts owe great deference to FAA determinations in an area such as **flight patterns where the agency has expertise and is the vehicle chosen by Congress to accomplish the regulations**. . . . For these reasons, courts are exceedingly slow to find an FAA rule or action regarding air flight or aircraft safety to be “arbitrary” or “irrational.” See *Virginians For Dulles v. Volpe*, 541 F.2d 442, 447 (4th Cir. 1976) (FAA **proprietary rules for National Airport regarding flight curfews, flight scheduling, etc.**, not violative of [APA]); *Air Line Pilots Association v. [FAA]*, 454 F.2d 1052, 1054 (D.C. Cir. 1971) (FAA rules regarding **minimum equipment for aircraft** not irrational).”

DiPerri v. FAA, 671 F.2d 54, 58–59 (1st Cir. 1982).

- “There is no dispute that the FAA has **broad and exclusive authority to regulate and control the use of the navigable airspace of the United States.**” *Sporty’s v. FAA*, 201 F.3d 441 (6th Cir. 1999) (resolving dispute over airspace classification in FAA’s favor).
- “[T]he FAA has the **authority to regulate navigable airspace** and prescribe rules governing the flight of aircraft. . . . In general, the FAA has divided all navigable airspace . . . into controlled or uncontrolled areas, based on altitude. . . . [T]he FAA designates other categories of airspace for special purposes. . . . By a Letter of Agreement dated May 18, 1978, the **Administrator authorized military aircraft to exceed a speed of 250 knots below 10,000 feet MSL under certain conditions, including any military flights within FAA designated Restricted Areas or MOAs.** Significantly, there is no FAA regulation at present that directly prohibits or regulates supersonic flight by military aircraft above 10,000 feet MSL” *Sierra Club v. Lehman*, 825 F.2d 1366, 1368-69 (9th Cir. 1987).

• “In addition, any examination of the **constitutionality of the FAA's revocation power** should logically take place in the district courts, as such an examination is **neither peculiarly within the agency's “special expertise” nor an integral part of its “institutional competence.”** *Mace v. Skinner*, 34 F.3d 854, 859 (9th Cir. 1994).

• “All of the plaintiff's contentions except one are grounded in **antitrust concepts**, a field in which the **FAA has no special expertise.**” *Pinehurst Airlines, Inc. v. Resort Air Servs., Inc.*, 476 F. Supp. 543, 549 (M.D. N.C. 1979).



IN THE NEWS ...

- <https://abc7chicago.com/virgin-galactic-grounded-faa-bans-richard-branson-flight/10995849/>



CASE STUDY: Federal Mine Safety And Health Review Commission (FMSHRC) Adjudication

CASE FILE

- Organic & Enabling Acts
- Hierarchy & Mission
 - Department of Labor ("we make the rules")
 - MSHA ("we enforce the rules")
 - FMSHRC/The Commission ("we adjudicate")
- Representative Commission decision: *Sec. of Labor, Mine Safety and Health Admin. v. Richmond Sand & Stone, LLC*, 41 FMSHRC 402 (Aug. 13, 2019).
- In the news ...

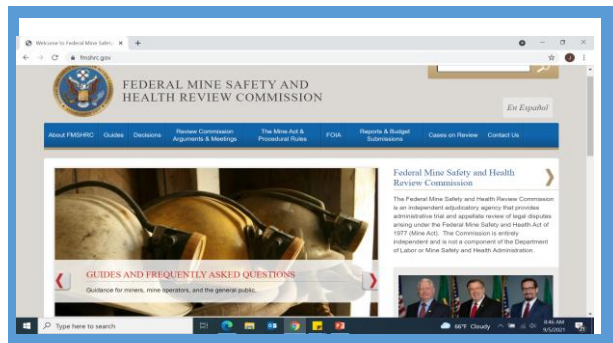
MISSION

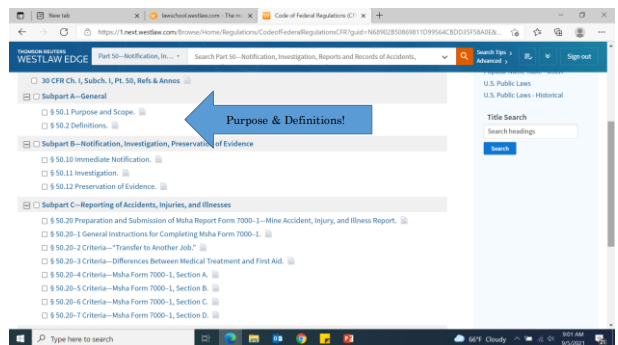
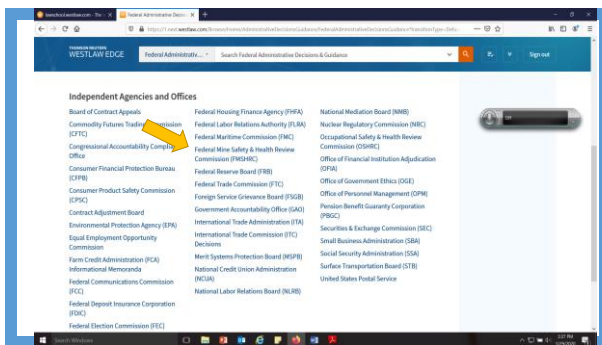
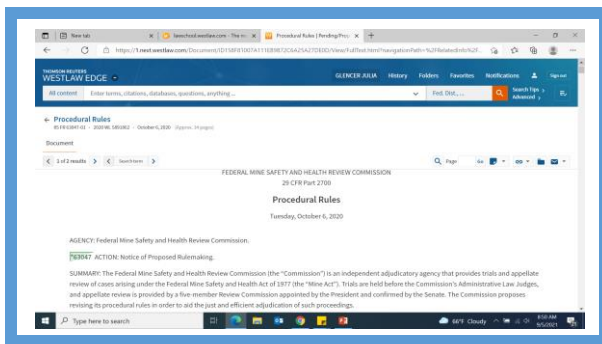
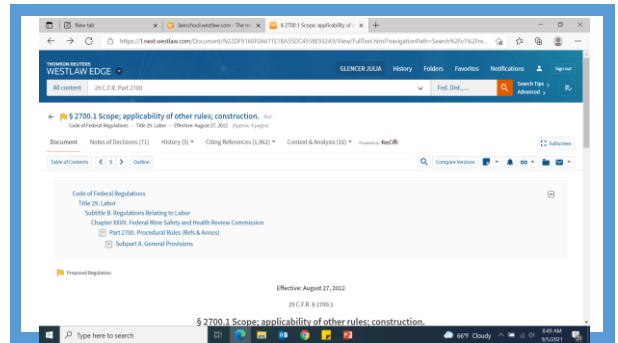
The Federal Mine Safety and Health Review Commission is an independent adjudicatory agency charged with resolving disputes arising from the enforcement of safety and health standards in the nation's mines. Under its authorizing statute, the Mine Act, FMSHRC does not regulate the mining industry, nor does it enforce the Mine Act; those functions are delegated to the Secretary of Labor acting through MSHA. FMSHRC's mission is to provide just, speedy, and legally sound adjudication of proceedings authorized under the Mine Act, thereby enhancing compliance with the Act and contributing to the improved health and safety of the nation's miners.

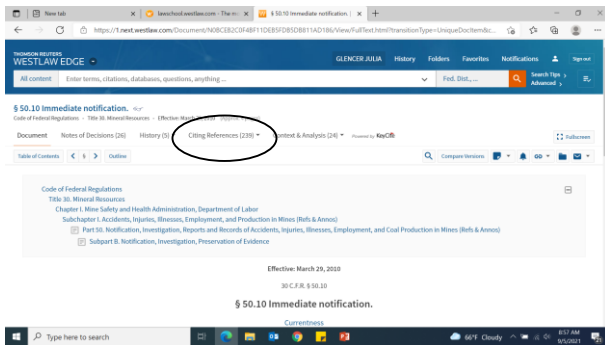
The scope of FMSHRC's mission was expanded by the passage of the MINER Act in 2006. That statute amended the Mine Act and vested FMSHRC with the responsibility for resolving disputes over the contents of mine emergency plans adopted by underground coal mine operators and submitted to MSHA for review and approval. The MINER Act imposed tight deadlines on FMSHRC and its ALJs with respect to these proceedings and FMSHRC has adopted procedural rules to implement those deadlines.

-FMSHRC CONGRESSIONAL BUDGET JUSTIFICATION & ANNUAL PERFORMANCE PLAN (FY 2022) (May 28, 2021).

- Department of Labor ("we make the rules")
- MSHA ("we enforce the rules")
- FMSHRC/The Commission ("we adjudicate")







AS YOU READ THE COMMISSION DECISION

- Observe:
 - the *fact-intensive* nature of the decision.
 - how the Commission uses *statutory construction tools*.
 - how the Commission stresses the *purposes* of the Mine Act.
 - how “*court-like*” the Commission acts –
 - in *what ways* do you notice?

(h) Accident means:

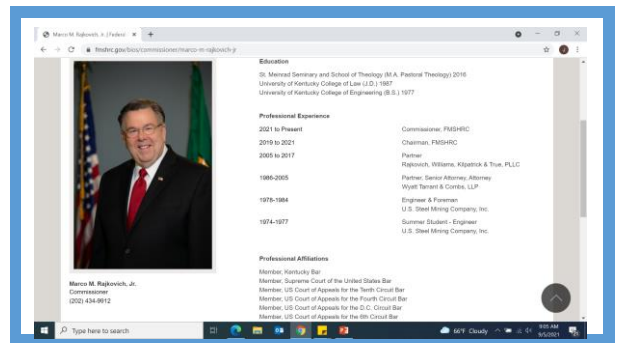
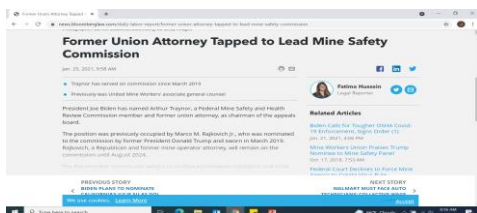
- (1) A death of an individual at a mine;
- (2) An injury to an individual at a mine which has a reasonable potential to cause death;
- (3) An entrapment of an individual for more than 30 minutes or which has a reasonable potential to cause death;
- (4) An unplanned inundation of a mine by a liquid or gas;
- (5) An unplanned ignition or explosion of gas or dust;
- (6) In underground mines, an unplanned fire not extinguished within 10 minutes of discovery; in surface mines and surface areas of underground mines, an unplanned fire not extinguished within 30 minutes of discovery;
- (7) An unplanned ignition or explosion of a blasting agent or an explosive;
- (8) An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or, an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;
- (9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour;
- (10) An unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or failure of an impoundment, refuse pile, or culm bank;
- (11) Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes; and
- (12) An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs.

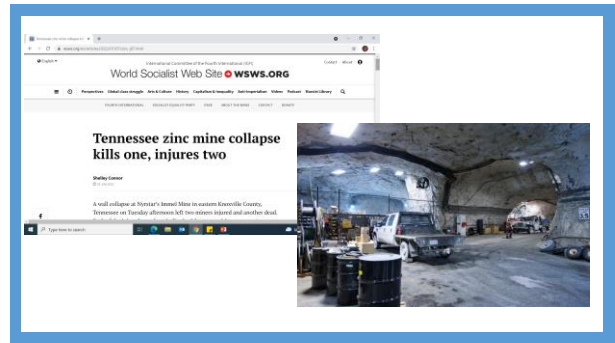
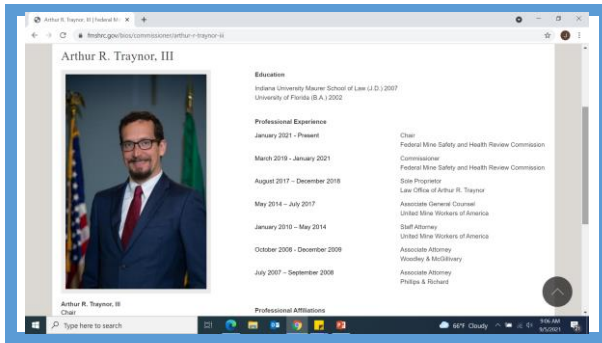
30 C.F.R. § 50.2 (Definitions)

- On Nov. 29, 2018, Mine's Gen. Manager Alderson suffered a fatal heart attack while working at the mine site, an open-pit crushed stone plant in West Greenwich, R.I.
- At approx. **11:00 a.m.**, Wilcox found Alderson lying face-down on the ground, called the dispatcher, who called “911,” around 11:12 a.m., then requested help from Mine employee Marietti, who arrived around 11:15 a.m. and moved Alderson onto the ground below the stairs, where he began chest compressions until EMS arrived. According to Marietti, Alderson was already blue, cold, and unresponsive.
- At approximately 11:18 a.m., EMS arrived and placed a heart monitor on Alderson, which Marietti observed flat-lining. At 11:24 a.m., EMS Paramedic Kelly Guastini pronounced Alderson dead.
- At 11:25 a.m., Mine VP Cardi called Hopkins Hill's environmental health and safety director, Manfredi, who then called MSHA to report Alderson's death at **12:56 p.m.**
- Citation issued for failure to report Alderson's death to MSHA *within 15 minutes* of the accident. \$5,903.00 penalty.
- “Remarkably similar” to *Richmond*; penalty approved.

MSHA v. Hopkins Hill Sand & Stone LLC, 41 FMSHRC 786 (Dec. 18, 2019).

IN THE NEWS ...





EXPERTISE AND EXPERIENCE . . .

Very much in the public eye
all the time



Relatively obscure, except in the
mining industry and in certain
localities

