

A Practical Guide to Interpreting Statutes for Business Professionals

Dr. Jill M. Oeding¹, Dr. Brett L. Bueltel²

Abstract

Statutes affect the average business professional on a daily basis, making it crucial for professionals to be able interpret statutes at a basic level. This article gives business professionals practical strategies for reading and interpreting statutes. The authors outline an approach to interpreting statutes, which ultimately exposes the statute's components known as elements, factors, results, and/or exceptions. The authors provide practical tips to reading a statute to ensure the reader adequately understands the statute. The approach uses headings to the reader's advantage to navigate through the statute and suggests reading through the text of the statute multiple times. The authors then encourage readers to identify commonly-used words in statutes such as "and," "or," "may," "except," and "shall." and define other statute-specific words. The goal of the approach is to dissect the statute into smaller, more understandable subparts to gain an accurate interpretation of the statute's components.

Keywords: statute, interpret, interpretation, statutory law, strategies

1. Introduction

Statutes and regulationsⁱ affect the average business professional on a daily basis; this reality makes it crucial for professionals to be able interpret statutes at a basic level.ⁱⁱ This article outlines a basic approach to reading and understanding statutory law. However, business professionals must know that it will be necessary at times to seek guidance from lawyers and accountants to help them interpret law when it is necessary.ⁱⁱⁱ

Prior to beginning to search for the law and eventually read statutes, the business professional should have a firm grasp of the factual situation as well as the legal research question he or she is addressing (Putman & Albright, 2015, p. 53; Clark & Connolly, 2017, p. 1). Time spent early in the research process narrowly tailoring the research question generally saves time overall in the research project because the researcher will likely be lead to relevant statutes rather than wasting large amounts of time reading statutes that do not apply to the legal question (Putman & Albright, 2015, p. 95).

The researcher should locate all of the statutes that may possibly apply to the legal question. Sometimes more than one statute or more than one section of a statute pertains to the legal question. (Putman & Albright, 2015, p. 106). A conscientious read-through of statutes will enable the reader to determine which apply and which do not apply. Typically the general scope of the statute will place the law inside or outside the research question.

2. Statutes are Primary Sources of Law

¹ JD, Assistant Professor of Accounting, Romain College of Business, University of Southern Indiana , 8600 University Blvd., Evansville, Indiana 47712 ,Tel: 1-812-465-1205 Email: jmoeding@usi.edu

² JD, CPA, Assistant Professor of Accounting Romain College of Business, University of Southern Indiana ,8600 University Blvd., Evansville, Indiana 47712 , Tel: 1-812-228-5172 Email: blbueltel@usi.edu

When researching the law in the United States, a business professional must be able to distinguish between primary and secondary sources of law (Oeding, Hudson, & Maier-Lytle, 2017, p. 259). Primary sources of law in the United States constitute the "text of the law itself" as opposed to secondary sources, which explain or comment on primary sources (Guide to evaluating, 2016). Statutes, constitutions, common law, and regulations are primary sources of law in the United States. This paper focuses on the interpretation of statutes.

Statutes are laws enacted by legislative bodies at the local, state, or federal levels of government (Cross & Miller, 2018, p. 4). The legislative body which passed the statute determines to whom the law applies (Oeding, Hudson, & Maier-Lytle, 2017, p. 261). For example, a statute passed by the U.S. Congress is considered federal law and is codified in the United States Code ("USC"). Federal law applies to all individuals and organizations in the fifty states and territories of the United States, whereas state and local laws only apply to the territory governed by the body which passed the law (Commonly requested, n.d.).

Business researchers must make sure that they seek statutes that apply to the issue. For example, if a business professional is researching the minimum wage that must be paid to employees working in Seattle, Washington, the researcher would need to consider and read any applicable statutes from the city of Seattle, the county of King, the state of Washington, and federal statutes passed by the U.S. Congress.

3. A Roadmap to Dissecting a Statute

Business professionals and other legal researchers tend to develop their own personal method for interpreting statutes (Maranville, n.d. p.2). As the researcher becomes more skilled with interpreting statutes, the researcher will follow certain innate steps that suits his thinking processes each time he interprets a statute. The authors recommend the following steps with interpreting statutes.

3.1 Take Advantage of the Headings

Once the researcher begins assessing whether a particular statute applies to a legal question and decides to delve deeper, the reader should not underestimate the value of headings within a statute. When interpreting a statute, the reader will get a big-picture perspective of the statute by reading the headings first. Headings illuminate the structure or the "bones" of the statute. The headings should give the reader a snapshot or brief summary of the nature of the information within the text of that section or subsection (i.e. portion) of the statute. A skilled reader will read through the headings, finding topics relevant to the issue being researched. Ideally, headings will lead the reader more directly to the particular language within a statute that addresses the legal issue he is researching.

3.2 Read the Text of the Statute Multiple Times

Once the reader uses headings to locate text that apparently addresses the relevant issue and gains a big-picture perspective of the statute, the reader should spend time reading the text multiple times. If the reader believes he has found some relevant text, the person may continue to read the text three to eight or more times to grasp the nuances of the statute. Reading the law is not like reading a novel. Multiple read-throughs are necessary as the reader's "initial interpretation of the text may not be the only plausible interpretation of the statute or even the correct one" (Clark & Connolly, 2017, p. 1 (citing Wren & Wren, 1986)). Each new reading may uncover language that is relevant to the issue. A responsible researcher should "read and consider all parts of a statute" (Putman & Albright, 2015, p.108). The failure to read or consider a particular section may result in the failure to find the correct answer to the legal question. A thorough researcher also continues reading through other parts of the statute to be certain to find other sections that may apply to the client's issue. After several readings, the researcher may realize that the terms of this particular statute or section of a statute does not address the legal issue that he is addressing; in this case the reader missed his target and must keep searching for relevant law.

As the interpreter is reading through the statute multiple times and attempting to break down the statute, a proficient researcher will underline, circle, or highlight important words that distinguish the statute. A reader should assume that all of the text is important, including the grammar and punctuation (Putman and Albright, 2015, p. 107; Eig, 2014, p. 13). Statutes can be very confusing and difficult to comprehend at first glance. Statutes may detail the kinds of behavior that is allowed or not allowed, the procedures that must be followed to achieve a certain goal or outcome, and the consequences for following or failing to follow the statutes. To read and understand these complex statutes, it is helpful to break down the statute into smaller, more understandable parts and identify how each part impacts the statute as a whole.

Maranville (n.d., p. 2) suggests that readers should "[i]dentify the structure of the statute, and break it into pieces, methodically, step by step." Interpreters of statutes may use one or more of the following approaches in analyzing statutes: (1) breaking the statute into elements that work together to trigger a particular legal result; (2) using an "if . . . then" approach to structuring the language; and (3) diagramming the statute by identifying certain parts of speech such as subject, verbs, adjectives, etc. Interpreters can use any method that allows him to accurately break down the section of the statute into understandable subparts. In the process of breaking down the statute, the reader should put the statute in his own terms, paraphrasing the statute into simpler terms. Readers often benefit from writing notes in the margins of the statute, translating the legalese into layman's terms.

3.3 Identify Components of a Statute

To understand how to interpret statutes, the researcher must first break down the statutes into components. Trying to read a statute without looking for the various components can make statutes difficult to understand. Each part of a statute helps to develop the legal rule that is being conveyed by the statute. Looking for these specific components can help the reader spot the critical words that shape the statute.

The most basic parts of a statute are the elements, factors, results and exceptions (Dernbach, Singleton II, Wharton, Ruhtenberg, Wasson, 2010, p. 57). An element of a rule describes a "factual condition that must exist for the rule to exist" (Dernbach, et. al., 2010, p. 58). Elements are the foundation of a rule. A rule can contain one element or many elements. Elements can stand alone without reference to the other elements or elements can be connected and dependent on other elements. In order to properly understand the rule, the relationship of the elements must be determined. Elements typically have three types of relationships: all elements must be met, only one of the elements must be met, or the elements are part of a "factor-test" where only some, but not all are needed. (Dernbach, et. al., 2010, p. 58).

3.3.1 When the Rule Requires that All Elements be Met

If all elements must be met, then the absence of any one element would prevent the rule from being satisfied; each element is dependent on the other. The reader should separate each element and see if the condition required for each element is met. If the rule requires all of the elements to be met, the absence of one element could cause the entire rule not to apply (Dernbach, et. al 2010, p. 58). For example, 29 U.S.C. § 2611(2) specifically defines an "eligible employee" under the Family and Medical Leave Act ("FMLA") as follows:

(2) ELIGIBLE EMPLOYEE

(A) IN GENERAL The term "eligible employee" means an employee who has been employed

- (i) for at least 12 months by the employer with respect to whom leave is requested under section 2612 of this title; **and** [emphasis added]
- (ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

Notice the "and" that is bolded and underlined prior to the last element. The word "and" commands that both elements be met. An "eligible employee" must have (i) been employed for at least one year with the employer that she is requesting leave and (ii) worked at least 1250 hours in the twelve months prior to the request for leave.^{iv} If a person is unable to meet one or both of these elements, the person would not be an "eligible employee" entitled to FMLA leave, unless another section of the statute applies to their situation. For example, if a person has been employed for only nine (9) months, the employee would fail to meet the minimum twelve-month requirement of the first element; therefore, the person would not be an "eligible employee" as defined in 29 U.S.C. § 2611(2) under the FMLA. This is a simple example as the rule only requires two elements to be met; some rules require a long list of elements to be met to satisfy the rule.

3.3.2 When the Rule Requires Some or Only One Element

Some rules require only some or one of the elements be met to satisfy the rule. These types of laws also could provide for multiple ways for a rule to be satisfied. If a rule only requires one element to be satisfied for the rule to apply, then each element is not as dependent on the other. The reader should still separate each element to understand the conditions required for each element to be met. The reader also must identify how many elements must be met for the rule to apply (Dernbach, et. al 2010, p. 58). For example, 29 U.S.C. § 2612(a) describes the following qualified reasons to take a leave under the FMLA:

(a) IN GENERAL

(1) ENTITLEMENT TO LEAVE Subject to section 2613 of this title, an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for **one or more of the following**[emphasis added]:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

(D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

(E) Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

The bolded and underlined text commands that only one element of the list (A) - (E) be present for the test to be met and thus, the result achieved. If one condition in (A) - (E) is present, then the eligible employee will have a qualified reason to take twelve weeks of leave. If none of the conditions from (A) - (E) are achieved, then the employee does not have a qualified reason to take up to twelve weeks of leave from work. This example only shows one prong of the eligibility for leave under the FMLA; a researcher should not interpret this section in isolation to other sections of the FMLA which proscribe an employee's and employer's eligibility based on other facts.

3.3.3 When the Rule is a Factor-Test

A factor-test does not require particular elements be met but that each should be weighed and considered to satisfy the rule. In factor tests, usually all factors do not need to be present and a strong showing in one or two factors could satisfy the rule. Factor tests are difficult to interpret because there is more subjectivity and factors can be met at varying degrees that cannot be objectively measured. Researchers should still isolate each factor, but the reader must do a more careful analysis to determine which factors are present and to what degree each factor is present or not present. Then, the researcher must consider how many factors need to be present and to what degree in order for the rule to apply (Dernbach, et. al 2010, p. 59). For example, 17 USC § 107 specifies the parameters of "fair use" of copyrighted material as follows:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

In order to determine whether an activity is within the bounds of fair use, person must weigh the four factors in the statute and the extent to which each factor, if any, is met. The weighing of factors is subjective in nature, which makes the researcher's task more difficult. The researcher should look to primary sources of law for the interpretation of factors within the rule.

3.3.4 The Result of the Rule

The previous examples applied the elements or factors that need to be present to satisfy the rule. The next step is to determine what happens after the elements are all present and the rule is satisfied. The result of a rule is what happens when the required elements of a rule are satisfied (Dernbach, et. al 2010, p. 59). The results can either require a certain result or prohibit a certain result, depending on the legal rule. For example, in the previous FMLA

example involving section 2612(a), if one of the elements is met, the rule is satisfied; the worker generally has a qualified reason to take twelve weeks off work, which is the result.

3.3.5 Exceptions

Exceptions indicate a different result than the elements dictate. In other words, even if the elements are present, an exception may prevent the result, and vice versa. Exceptions allow certain results to occur even though a person meets the elements or fails to meet the elements of another rule (Dernbach, et. al 2010, p. 60). For example, the FMLA allows an employee to take twelve weeks off work if the employee and the employer qualifies under the law, but the following exception to the entitlement of leave exists in 29 U.S.C. § 2612(f) in a situation where spouses are "employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken" for the birth, adoption, or foster care placements of a child or to care for a sick parent.

In the FMLA example applying 29 USC 2612(a)(1), an employee had a qualified reason to take leave from work if the employee met at least one of the elements in the list (A) - (E). An employee may have a qualified reason to take leave under 29 USC § 2612(a)(1), yet still may not be able to take the entire twelve weeks of leave due to the exception in 29 U.S.C. § 2612(f), which permits spouses employed by the same employer, to receive only twelve total workweeks of leave between the two of them for certain FMLA leaves. Therefore, the exception to the FMLA entitlement rule allows for a different result than one might surmise at first glance of the statute. This example shows the importance of performing a thorough search of relevant law. With the law, most general rules have exceptions, so prudent researchers should be looking for them.

3.4 Identify Words Common to Statutes

In conjunction with identifying the basic components of the statute such as elements, factors, results, and exceptions, the reader should be identifying particular words commonly found in statutes such as "and," "or," "may," and "shall." The reader should identify and denote particular words by underlining, circling, or highlighting them. At a minimum, a proficient reader should immediately recognize and highlight the following particular words within a statute.

3.4.1 And/Or

Information within the text of a statute is often separated by "and" or "or." Identifying and understanding these small words is critical to understanding the statute. Typically within a statute, "and" is conjunctive and means that all of the listed criteria must be met, as was the case with the two elements required by the definition of an "eligible employee" in the previous FMLA example. "Or" is generally disjunctive and means that only one criterion must be met (Eig, 2014, p. 9). For example, in the previously-mentioned FMLA statute, one of the qualified reasons to take a leave under the FMLA rule is "to care for the spouse, or a son, daughter, **or** [emphasis added] parent of the employee" with a serious health condition (29 USC § 2612(a)(1)(C). To meet this rule, the employee must care for only one of these specific types of family members, not all of these family members.

3.4.2 May/Shall/Must

Readers should pay close attention to the helping verb listed before the main verb within a sentence. "Must" and "shall" are mandatory terms, generally signifying that certain criteria is mandated by the statute. In other words, the statute requires the terms within that sentence. Section 2612(a) of the FMLA which denotes eligible reasons to take a leave under the FMLA states, "an eligible employee **shall** [emphasis added] be entitled to a total of 12 workweeks of leave during any 12-month period" for specified reasons (29 U.S.C. § 2612(a)(1)). The critical words here are "shall be entitled," which mandate an employer to offer leave to an eligible employee as long as no other exceptions apply. Alternatively, "may" is generally a permissive term (Eig, 2014, p. 10; Clark & Connolly, 2006, p. 4). If the statute had stated "may be entitled," this would change the result of the rule by making the leave entitlement discretionary.

3.4.3 If/Then, Upon, Before/After, Provided That

Some rules are conditional in nature. Sometimes that language of a statute requires a precondition to be satisfied in order for another part of the text to apply. A precondition may be signaled by one of the following terms: "if/then," "upon," "before," "after," and "provided that" (Clark & Connolly, 2006, p. 4). For example, the FMLA permits an eligible employee to take leave "to care for the spouse, or a son, daughter, or parent, of the

employee, **if** [emphasis added] such spouse, son, daughter, or parent has a serious health condition" (29 U.S.C. § 2612(a)(1)(C)).

The precondition in this case is the necessity of a serious health condition by the family member for whom the employee wishes to care. If the spouse, child, or parent does not have a "serious health condition" as defined by the statute, an eligible employee would not be entitled to leave under the statute. Readers should pay close attention to how preconditions affect the meaning of the statute.

3.4.4 Unless/Except

The reader must discern whether his situation fits into a general rule or any of its exceptions "Unless" and "except" generally denote an exception to the rule. (Clark & Connolly, 2006, p. 4). Often the statute will state a general rule and then list exceptions to the general rule set off by "unless" or "except." Exceptions may be listed within the same sentence or in a separate section or subsection. For example, section 2612(b)(1) of the FMLA states that leave due to the birth, adoption, or foster care placement of a child "shall not be taken by an employee intermittently or on a reduced leave schedule **unless** [emphasis added] the employee and the employer of the employee agree otherwise." This means that an employer is not required to honor the request of an employee to take intermittent leave for the adoption of a child, for example, but the employer may choose to honor an employee's request of the intermittent leave.

As the researcher is reading statutory text, the researcher should be combing the statute for those common words that clarify the meaning of the language. As with any general rule, there can be exceptions to these general rules and the usage of common words (Wisotsky, 2009, p. 326), so the reader must read the statute carefully.

3.5 Discern the Meaning of Other Important Words

After the reader identifies commonly-used language, the reader should identify other specialized, statute-specific words that dictate the meaning of the text. Specialized language is often defined by the statute or by other related sources of law. A reader should not assume a layman's definition for terms within the statute. If a person assumes a layman's definition for a term when the statute defines the term otherwise, the researcher may incorrectly interpret the statute.

An example will exemplify the principle that a researcher should not automatically use a layman's definition for a term. John requests time off work to care for his aunt who cared for John in his childhood and has a serious health condition. John's employer might be quick to deny the request because the FMLA statute provides leave for an eligible employee "to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition" (29 U.S.C. § 2612(a)(1)(C)), and an "aunt" is not listed as a qualified family member for whom the employee may take FMLA leave.

After careful consideration, however, the researcher should discover that the FMLA defines "parent" as the "biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter" (29 USC § 2611(7)). Further research reveals that "[p]ersons who are 'in loco parentis' include those with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary" (29 C.F.R. § 825.122(c)(3)).^v Therefore, John's employer in this example needs to get more information from the employee to see if the John's aunt stood "in loco parentis" to the employee and would qualify as a "parent."

This example shows many lessons about statutory interpretation. First, researchers should be careful when relying on a layman's definition of a term. A layman's definition or dictionary definition of "parent" under 29 U.S.C. § 2612(a)(1)(C) may have led the researcher to the incorrect legal answer. Second, a researcher often needs to rely on sources outside the statute to interpret the statute such as common law, administrative law, or other statutes (Eig, 2014, p. 7-8). In the prior hypothetical, an administrative regulation (i.e. 29 C.F.R. § 825.122(c)(3)) sheds more light on the definition of "parent" under the FMLA. Third, a researcher may need to collect more facts in order to adequately answer the legal questions.

3.5.1 Terms Defined by the Statute

The first place to look for the meaning of a term or a phrase is in a "definitions section" within the statute (Putman and Albright, 2015, p. 107; Eig, 2014, p. 7), as has been the case with many of the examples in this article.

Sometimes terms are defined by language in another section or subsection of the statute, and the researcher must search for the definition. In other cases, the statute may directly refer the reader to the definition in the text by stating "as defined in . . ." However, not all terms are defined by law.

3.5.2 Terms Undefined by the Statute

Terms or phrases undefined by the statute or other sources of law are more difficult to interpret. If the term is not specifically defined by the statute, the reader should research whether the term may be clarified by another primary source of law such as an administrative regulation, court ruling, or another statute (Eig, 2014, p. 7-8). Another helpful source of interpreting language is context.

Context is the idea of viewing the terms or phrases in view of the surrounding language. "The meaning of a word that appears ambiguous if viewed in isolation may become clear when the word is analyzed in light of the terms that surround it" (Wisotsky, 2009, p. 343 (citing *Smith v. U.S.*, 508 U.S. 223 (1993))). In discerning the plain meaning of a statute, a court "must look to the particular statutory language at issue, as well as the language and design of the statute as a whole" (Wisotsky, 2009, p. 343 (citing *Household Credit Services, Inc., v. Pfennig*, 541 U.S. 232, 239 (2004))).

If the context of the language offers no help, the researcher may consider what a court would do if facing the same dilemma of interpreting the language without a statutory definition. Courts tend to use three primary steps in interpreting a statute: (1) apply the Plain Meaning Rule ("PMR"), (2) examine the legislative history and intent, and (3) apply public policy. (Beatty, Samuelson, & Abril, 2019, p. 101). The first step a court would generally take is to apply to the PMR, also known as the Ordinary Meaning Rule. The PMR assumes that if the words in a statute are plain and unambiguous, the court will apply the meaning that a reasonable person would derive from the language (*Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003); Eskridge, 2016, p. 33; Eig, 2014, p. 3). Courts sometimes use dictionaries to shed light on the definition of words when applying the Plain Meaning Rule (Eskridge, 2016, p. 58-59; Eig, 2014, p. 8).

If a court is unable to discern the meaning of a statute using the PMR, the next step a court might take is to review any legislative history such as committee hearings, committee reports and floor debates, to determine the intent of the legislature (Beatty, Samuelson, & Abril, 2019, p. 101). If a court still struggled to interpret the language, the court might apply the general public policies. For purposes of this paper and the idea of basic statutory interpretation, a person attempting to interpret language that is undefined and not interpreted by other sources of law could research dictionary meanings and a statute's legislative history. However, attempting to discern how a court might apply the legislative history or public policy to interpret a statute is beyond the scope of this paper. This would be a good time to enlist some guidance from a legal professional.

4. Conclusion

The authors identify the following practical steps in this article that any business professional can take to develop an understanding of even the most complex statutes: 1) read the statute numerous times and utilize headings to navigate the statute; 2) dissect the statute by identifying elements, rules, exceptions and results to determine how the statute is organized and what must occur or not occur to achieve the result; 3) identify common words that are crucial to interpretation such as "and," "or," and "if/then"; and 4) discern the meaning of other important words defined by the statute itself or by other primary sources of law. As with most skills, the skill of interpreting statutes will improve with practice. Business professionals need to be able to understand statutes in order to conduct their business. Each legal researcher will develop their own style with reading and interpreting statutes. A person's style is not as important as interpreting a statute thoroughly and accurately.

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Footnotes

ⁱ Regulations are very similar in textual appearance to statutes. Regulations are laws promulgated by local, state, or federal administrative agencies (Beatty, Samuelson, & Abril, 2019, p. 104-105).

ⁱⁱ This paper was designed to help business professionals develop the basic skills needed to interpret statutes and regulations they may encounter in their positions. This paper does not constitute legal advice, should not be interpreted as legal advice, and is presented without any representation or warranty as to its accuracy, completeness, or timeliness. The issues herein contained are used as examples for teaching purposes only.

ⁱⁱⁱ A person should contact a lawyer, an accountant, or another business professional if the person does not feel confident with his interpretation of the law.

^{iv} This is an example of how a person interpreting a statute can write the language in simpler, laymen's terms.

^v This is an example of a federal administrative regulation. "C.F.R." stands for Code of Federal Regulations (Cross & Miller, 2018, p. 15).