



11TH ANNUAL
ADMINISTRATIVE LAW & REGULATORY
PRACTICE INSTITUTE

FULL DAY PROGRAM

THURSDAY – APRIL 30, 2015

RULEMAKING 101

The Rulemaking Process and
Judicial Review of Rules

FRIDAY – MAY 1, 2015

**THE WALTER E. WASHINGTON CONVENTION CENTER
WASHINGTON, DC**

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**Program Chair – Renée Landers
Section Chair – Anna W. Shavers**

11TH ANNUAL ADMINISTRATIVE LAW & REGULATORY PRACTICE INSTITUTE

THURSDAY APRIL 30, 2015

BALLROOM 202 AB, SECOND FLOOR, WALTER E. WASHINGTON CONVENTION CENTER

7:00 AM – 7:50 AM	Registration and Continental Breakfast
7:50 AM – 8:00 AM	Welcome & Introductions
8:00 AM – 9:30 AM	Responding to the Humanitarian Crisis: Providing Pro Bono Assistance to Minors in Immigration Matters
9:30 AM – 9:45 AM	Break
9:45 AM – 10:45 AM	Rapidly Changing Healthcare Regulation – Challenges for the Corporate and Agency Legal Advisor
10:45 AM – 12:15 PM	Regulating E-Cigarettes as Promoting Health?
12:15 PM – 1:00 PM	Lunch Break (Boxed Lunches Provided)
1:00 PM – 2:30 PM	<i>Perez v. Mortgage Bankers</i>: The Justices Answer One Question But Ask Another
2:30 PM – 2:45 PM	Break
2:45 PM – 4:15 PM	EPA's Clean Power Plan: An Exercise in Statutory Interpretation
4:15 PM – 4:25 PM	Break
4:25 PM – 5:30 PM	Agency Avoidance of Rulemaking Procedures
5:30 PM – 6:30 PM	Reception

FRIDAY MAY 1, 2015

BALLROOM 201, SECOND FLOOR, WALTER E. WASHINGTON CONVENTION CENTER

8:00 AM – 9:00 AM	Registration and Continental Breakfast
9:00 AM – 10:30 AM	The Rulemaking Process
10:30 AM – 10:45 AM	Break
10:45 AM – 12:15 PM	Judicial Review of Rules

PROGRAM FACULTY

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Senior Counsel and Head of Regulatory Advocacy,
General Electric Company, Washington, DC

Lauren Freeman

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Russell Frye

Principal, FryeLaw PLLC, Washington, DC

Robert Glicksman

J. B. and Maurice C. Shapiro Professor of Environmental
Law, George Washington University Law School,
Washington, DC

Mandy Gunasekara

Majority Counsel, U.S. Senate Committee on Energy and
Public Works, Washington, DC

Dennis Henigan

Director, Legal and Policy Analysis, Campaign for
Tobacco-Free Kids, Washington, DC

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Boston, MA

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Camden, NJ

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Dina Michels

Vice President & General Counsel, American Society of
Clinical Oncology, Alexandria, VA

Richard Murphy

AT&T Professor of Law, Texas Tech University School of
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DC

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School of Law, Arlington, VA

Connor Raso

Counsel, U.S. Securities and Exchange Commission,
Washington, DC

David Rostker

Assistant Chief Counsel for Environment and Regulatory
Reform, SBA Office of Advocacy, Washington, DC

John Wagner

Senior Attorney, American Petroleum Institute,
Washington, DC

Hon. Jack H. Weil

Assistant Chief Immigration Judge, Executive Office for
Immigration Review, U.S. Department of Justice, Falls
Church, VA

Adam White

Counsel, Boyden Gray & Associates, Washington, DC

11TH ANNUAL
ADMINISTRATIVE LAW & REGULATORY
PRACTICE INSTITUTE
PROGRAM TITLE

THURSDAY – APRIL 30, 2015

7:00 AM – 7:50 AM **Registration and Continental Breakfast**

7:50 AM – 8:00 AM **Welcome and Introductions**

Renée M. Landers, Program Chair

8:00 AM – 9:30 AM **RESPONDING TO THE HUMANITARIAN CRISIS: PROVIDING PRO BONO ASSISTANCE TO MINORS IN IMMIGRATION MATTERS**

Panelists:

Elizabeth Dallam, National Legal Services Director, Kids in Need of Defense, Washington, DC

Hon. Jack H. Weil, Assistant Chief Immigration Judge, Executive Office for Immigration Review, U.S. Department of Justice, Falls Church, VA

Anna Williams Shavers, Cline Williams Professor of Citizenship Law, Nebraska College of Law, Lincoln, NE

Experienced immigration lawyers will provide attendees with an introduction to representing children in removal proceedings, including why the children are in the U.S. and why they need legal assistance. Panelists will discuss immigration court procedures and possible forms of relief including asylum, T visas (trafficking), U visas (crime victims, including trafficking victims), and SIJS visas (special immigrant juvenile status). This session is presented in conjunction with the ABA Working Group on Unaccompanied Minor Immigrants.

9:30 AM – 9:45 AM **BREAK**

9:45 AM – 10:45 AM **RAPIDLY CHANGING HEALTHCARE REGULATION – CHALLENGES FOR THE CORPORATE AND AGENCY LEGAL ADVISOR**

Panelists:

Michael Fitzpatrick, Senior Counsel and Head of Regulatory Advocacy, General Electric Company, Washington, DC

Brent Henry, Vice President & General Counsel, Partners HealthCare, Boston, MA

Dina Michels, Esq., Vice President & General Counsel, American Society of Clinical Oncology, Alexandria, VA

Healthcare General Counsels review the unique challenges of dealing with a rapidly changing industry afflicted by constantly evolving regulatory programs and related court decisions at the federal and state levels. This popular annual program provides insight on the impact of rules on regulated entities, and the challenges faced by agencies developing rules.

10:45 AM – 12:15 PM **REGULATING E-CIGARETTES AS PROMOTING HEALTH?**

Panelists:

Azim Chowdhury, Partner, Keller and Heckman LLP, Washington, DC

Dennis Henigan, Director, Legal and Policy Analysis, Campaign for Tobacco-Free Kids, Washington, DC

Craig N. Oren, Professor, Rutgers School of Law, Camden, NJ

The Food and Drug Administration is now considering whether and how to regulate E-Cigarettes. The outcome of this consideration may give insights into how regulatory agencies deal with scientific uncertainty involving substances that carry benefits as well as risks.

12:15 PM – 1:00 PM **LUNCH BREAK (BOXED LUNCHES PROVIDED)**

1:00 PM – 2:30 PM ***PEREZ V. MORTGAGE BANKERS: THE JUSTICES ANSWER ONE QUESTION BUT ASK ANOTHER***

Panelists:

Kathryn Kovacs, Associate Professor, Rutgers School of Law, Camden, NJ

Richard Murphy, AT&T Professor of Law, Texas Tech University School of Law, Lubbock, TX

Neomi Rao, Associate Professor of Law, George Mason University School of Law, Arlington, VA

Adam White, Counsel, Boyden Gray & Associates, Washington, DC

Moderator: Anna Williams Shavers, Cline Williams Professor of Citizenship Law, Nebraska College of Law, Lincoln, NE

In *Perez v. Mortgage Bankers Association*, the Supreme Court unanimously held that an interpretive rule need not go through notice and comment -- even when the rule makes a "significant" change to the agency's prior, "definitive" interpretation. But in deciding that procedural issue, several of the Justices raised fundamental questions about the amount of deference that agencies should receive in interpreting their own regulations. What does *Perez* bode for the future -- both in terms of procedure, and in terms of deference?

2:30 PM – 2:45 PM

BREAK

2:45 PM – 4:15 PM

EPA'S CLEAN POWER PLAN: AN EXERCISE IN STATUTORY INTERPRETATION

Panelists:

Robert Glicksman, J. B. and Maurice C. Shapiro Professor of Environmental Law, George Washington University Law School, Washington, DC

Mandy Gunasekara, Majority Counsel, U.S. Senate Committee on Energy and Public Works, Washington, DC

Ben Longstreth, Senior Attorney, Natural Resources Defense Council, Washington, DC

Roger Martella, Partner, Sidley Austin LLP, Washington, DC

Moderator: David Rostker, Assistant Chief Counsel for Environment and Regulatory Reform, SBA Office of Advocacy, Washington, DC

In June 2014, the Environmental Protection Agency (EPA) proposed the [Clean Power Plan](#) – the first-ever carbon pollution standards for existing power plants. EPA has been challenged on (1) its authority to regulate GHG emission from existing power plants and (2) its authority to set standards for emissions from the entire electricity generating sector of the economy rather than from an individual power plant. Both questions of authority hinge on questions of statutory authority and whether EPA is due deference in its interpretation of the Clean Air Act. To overly simplify the issues, the first question may be a case of scrivener's error, whether two contradictory amendments to the Clean Air Act were both enacted into law, and the second question is the meaning of the word "system."

Interestingly, although these rules are not yet final, the Court of Appeals for the D.C. Circuit has allowed two suits against EPA to proceed, *In re: Murray Energy Corp. and West Virginia v. EPA*, both raising this first question. Oral arguments were scheduled for April 16.

This panel will explore the issues of statutory interpretation EPA raises in its rulemaking, and the responses from outside observers, including NRDC, an intervenor in both pending lawsuits.

4:15 PM – 4:25 PM

BREAK

4:25 PM – 5:30 PM

AGENCY AVOIDANCE OF RULEMAKING PROCEDURES

**Connor Raso, Counsel, U.S. Securities and Exchange Commission,
Washington, DC**

**Amit Narang, Regulatory Policy Advocate, Public Citizen, Washington,
DC**

This panel will address when and why agencies avoid rulemaking procedural requirements and the costs and benefits such avoidance poses. Specific discussions will include agency use of statutory exemptions to avoid rulemaking procedures. Additionally, the panel will focus on avoidance during the threat of a lawsuit of impending litigation along with analysis of judicial enforcement in connection with litigation challenging such avoidance of rulemaking procedures.

5:30 PM – 6:30 PM

RECEPTION

RULEMAKING 101

The Rulemaking Process and Judicial Review of Rules

FRIDAY – MAY 1, 2015

8:00 AM – 9:00 AM Registration and Continental Breakfast

9:00 AM – 10:30 AM **THE RULEMAKING PROCESS**

“Inside Government”

Daniel Cohen, Assistant General Counsel for Legislation, Regulation & Energy Efficiency, U.S. Department of Energy, Office of the General Counsel, Washington, DC

Andrew Emery, President, The Regulatory Group Inc., Arlington, VA

“Outside Government”

Russell Frye, Principal, FryeLaw PLLC, Washington, DC

This panel will provide an introductory/refresher course on the procedural steps, legal requirements, and practical constraints applicable to issuing rules. The course will be co-taught by a team of lawyers with government and private practice experience, each bringing out considerations most relevant from their particular perspectives.

10:30 AM – 10:45 AM Break

10:45 AM – 12:15 PM **JUDICIAL REVIEW OF RULES**

“Inside Government”

Sheila Lieber, Deputy Director, Civil Division, U.S. Department of Justice, Washington, DC

“Outside Government”

Lauren Freeman, Partner, Hunton and Williams LLP, Washington, DC

John Wagner, Senior Attorney, American Petroleum Institute, Washington, DC

This panel will provide an introductory/refresher course on judicial review of rulemaking. The panel will present government and private practice perspectives on procedural and strategic considerations, legal standards and practical constraints applicable to challenging (or defending) regulations in court.

11th Annual Administrative Law and Regulatory Practice Institute | Washington, DC | April 30 – May 1, 2015

Registration: [ONLINE](#) or use this form to register. Deadline for advance registration is April 24. On-site registration may be available – check with the Section at 202.662.1690. Credit cards or checks are required at the time of registration (training vouchers, SF-182, or EFT CANNOT be accepted). Wire Transfers and ACH payments will also be accepted for advance registration only. Receipt copies are emailed to the registrant when the registration is processed.

In the interest of furthering the ABA's creation, promotion and distribution of educational/informational materials (both now and in the future), I understand and agree that my registration and attendance at, or participation in, ABA meetings, programs and events ("Events") constitutes an agreement by me to grant to ABA the right to record my image, photograph, picture, likeness, and voice by any technology or means. I also grant ABA the right to copy, use, perform, display and distribute such recordings of me for any legitimate purpose, including but not limited to distribution by means of streaming or other technologies via the Internet, or distribution of audio or video files for download by the public. I hereby waive any right to inspect, approve, or be compensated for use of any materials incorporating such images obtained during the Events. I release ABA and its agents, representatives and licensees from all liabilities arising out of any use of my likeness and information as provided above. I understand and agree that any and all negatives, digital images, and recordings of my likeness, regardless of form, are and shall remain property of the ABA.

Conference Location: Walter E. Washington Convention Center, 801 Mount Vernon Place NW, Washington, DC 20001
<http://www.dconvention.com>. The Convention Center is easily accessed via the Metro Yellow/Green Lines at the Mt. Vernon Square/7th St-Convention Center station. For more information and directions, please visit the Convention Center's [website](#). Sorry, we cannot validate parking.

CLE: The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 11 CLE credit hours in 60-minute states, and 13 credit hours in 50-minute states. This transitional program is approved for both newly admitted and experienced attorneys in NY. For more information about CLE accreditation in your state, visit <http://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=187105729> or contact angela.petro@americanbar.org or 202.662.1582.

All CLE materials will be distributed on a flash drive at registration. Please contact angela.petro@americanbar.org by March 30, 2015 if your local MCLE board/state requires a hard copy of materials.

Scholarships: A limited number of scholarships to defray tuition expenses are available for this program. To request an application or receive additional information, please contact anne.kiefer@americanbar.org or 202.662.1690. Scholarship applications must be received by the ABA no later than two weeks prior to the program presentation.

Cancellation: Cancellations accepted with cancellation fee (\$25-\$50 depending on rate). Substitutions are accepted without fee. Contact angela.petro@americanbar.org or 202.662.1582.

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Qty.	Registration Type	Rates
April 30 – May 1, 2015 – Full Program, 11 Hours Professional Practice CLE, Lunch April 30		
	ABA Administrative Law Section Member, and Government Attorney Rate	\$279
	Young Lawyer Member (0-3 Years post Bar Admittance)	\$249
	ABA Member	\$299
	Non-Member of ABA (not a Government Attorney)	\$329
	Law Student 2 Day Rate (1 Day Rate \$12)	\$25
Single Day Rate		
	April 30 ONLY, 8 Hours Professional Practice CLE	\$249
	May 1 Rulemaking 101 ONLY, 3 Hours Professional Practice CLE	\$249
	TOTAL FEES	\$

Payment by check or credit card is required at time of registration. Make checks payable to the American Bar Association. Return this form by EMAIL: alisha.dixon@americanbar.org FAX: 202-662-1529 OR MAIL: Alisha Dixon, ABA Section of Administrative Law, 1050 Connecticut Avenue NW, Suite 400, Washington, DC 20036.

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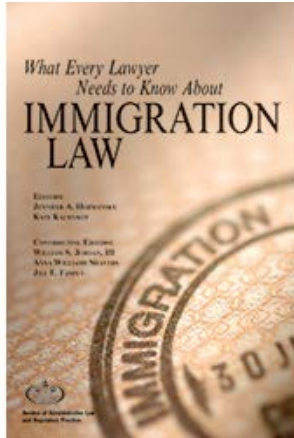
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FEATURED PUBLICATIONS

Section of Administrative Law & Regulatory Practice

What Every Lawyer Needs to Know About Immigration Law

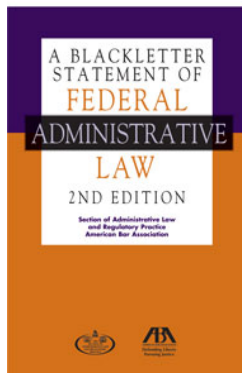


Given the many ways in which immigration law can affect a single individual as well as large corporation, most lawyers will encounter a client needing immigration law advice. Yet for the nonspecialist, immigration law can be daunting, particularly because it is governed by a complex mix of statutes, regulations, and federal and administrative court guidance - as well as by adjudicatory policies from multiple administrative agencies. Thus, it is important for lawyers to understand how best to spot immigration issues for clients, and when to involve an immigration attorney for assistance with a client. This book was written by immigration law specialists whose insights, guidance, and practice tips can offer help in understanding these issues.

The book is meant to provide attorneys working in various areas of law with enough information to identify problematic immigration issues, counsel their clients accordingly and if the matter is advanced to know when to advise the client to consult with immigration counsel. It will also introduce attorneys to the myriad of agencies involved in the immigration process.

2014 6 x 9
562 pages
PC 5010080
\$99.95
AL Members \$79.95

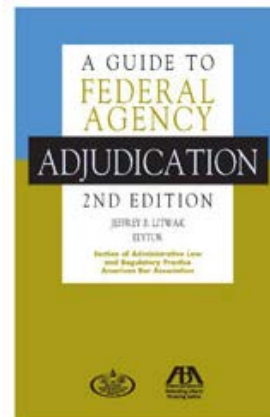
A Blackletter Statement of Federal Administrative Law



This book is an updated version of the original Blackletter Statement of Federal Administrative Law (2004), which represents collective views on the interpretation and application of the Administrative Procedures Act. The book is broken into six key topic categories of administrative law: Adjudication, Informal Rulemaking, Scope of Review, The Availability of Judicial Review of Administrative Action, Freedom of Information, Sunshine, Advisory Committees, Government Management of the Administrative Process

2013 6x9 132 pages PC 5010077
\$34.95 AL Members \$24.95

A Guide to Federal Agency Adjudication, 2nd Edition

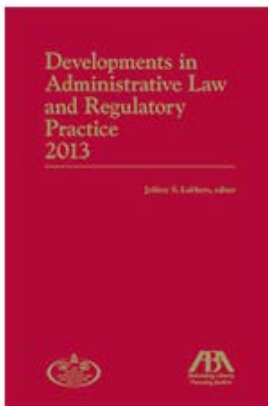


Now in its second edition, *A Guide to Federal Agency Adjudication* is written to assist government and private counsel engaged in all varieties of administrative adjudication. The book is an outgrowth of a federal Administrative Procedure Act (APA) study that was launched by the ABA Section of Administrative Law and Regulatory Practice prior to the first edition.

While the book is focused primarily on the law of the APA, in light of its in-depth discussion, including many illustrative examples and exhaustive citation to pertinent works, *A Guide to Federal Agency Adjudication, Second Edition* will prove instructive to all who are involved with administrative agencies, whether at the federal or state level.

2012 6 x 9 320 pages
PC 5010072
\$74.95
AL Members \$59.95

Developments in Administrative Law and Regulatory Practice, 2013



This 15th edition describes the four primary administrative process topics (e.g. Adjudication, Constitutional Law and Separation of Powers, Judicial Review, and Rulemaking), while separate chapters devoted to substantive areas of practice are published in the eBook version. As an annual publication, it also provides a historical chronicle of changes in administrative law and regulatory practice.

2014 6 x 9 132 pages
PC 5010081
\$59.95
AL Members \$15.95

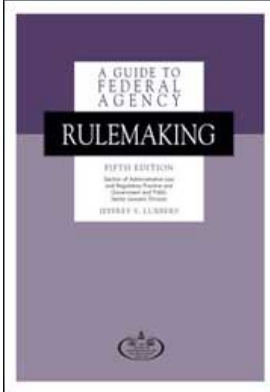
E-Book free for Section Members!!

[SECTION MEMBERS: COMPLIMENTARY 2013
E-BOOK DOWNLOAD IS NOW AVAILABLE!](#)

FEATURED PUBLICATIONS

Section of Administrative Law & Regulatory Practice

A Guide to Federal Agency Rulemaking, Fifth Edition



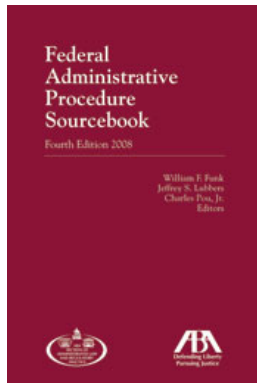
2012 7 x 10 500 pages
PC 5010073
\$139.95
AL/GPSLD Members \$119.95

Given the extensive use of rulemaking in federal agencies, it is important that agency rulemakers have available as clear guidance as possible. As procedures governing the rulemaking process have proliferated since the Administrative Procedure Act was enacted, the potential procedural pitfalls have multiplied. This fifth edition continues the tradition, and brings the Guide up to date with respect to recent cases and changes introduced during the second term of the Bush II Administration, and the first three years of the Obama Administration.

This Fifth Edition retains the basic organization of the previous four, containing four parts: Part I is an overview of federal agency rulemaking and describes the major institutional "players" and historical development of rulemaking. Part II describes the statutory structure of rulemaking, including the relevant sections of the Administrative Procedure Act (APA) and other statutes that have an impact on present-day rulemaking. Part III contains a step-by-step description of the informal rulemaking process, from the preliminary considerations to the final rule. Part IV discusses judicial review of rulemaking. Appendices include some key rulemaking documents.

Moreover, the rise of "e-rulemaking" has continued to be dramatic since 2006, with the large majority of public comments now being filed electronically--with many ramifications that were absent in the era of "paper" rulemaking. And there have been numerous new significant lower court decisions as well. This edition also continues to emphasize court decisions concerning rulemaking procedure and the judicial review of rules.

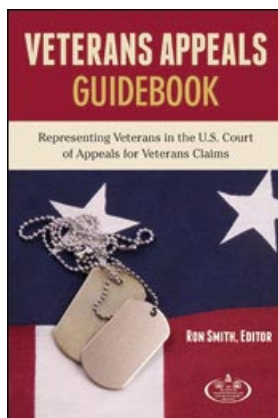
Federal Administrative Procedure Sourcebook, 4th Edition



Federal Administrative Procedure Sourcebook, Fourth Edition provides access to and explanations of the key procedural laws and presidential directives that apply across-the-board to federal agencies. It contains all the significant statutes, Executive Orders, memoranda, and other materials relating to the major aspects of administrative law and regulatory practice. In addition to the primary sources, this volume includes pertinent legislative history, bibliographies of related sources, and the editors' insightful commentary on each of the source documents. It also includes the Attorney General's Manual on the APA. This new edition of the Sourcebook reflects dozens of statutory and regulatory changes since the first three editions were published and contains new chapters dealing with several statutes and other authorities that were not covered previously. These include the E-Government Act of 2002 and the Information Quality Act. This completely up-to-date resource also includes the important amendments to Executive Order 12,866 and the major December 2007 amendment to the Freedom of Information Act.

2008 6 x 9
1172 pages
PC 5010049
\$79.95
AL Members \$49.95

Veterans Appeals Guidebook: Representing Veterans in the U.S. Court of Appeals for Veterans Claims



This book seeks to assist practitioners representing veterans and other claimants who are appealing or wish to appeal to the United States Court of Appeals for Veterans Claims (CAVC). It addresses the basics of appeals to the CAVC, explores the jurisdiction of the court, and outlines the CAVC appellate process. Many practitioners either have not previously handled an appeal to the court or do so only infrequently. This book will help facilitate appeals to the court and perhaps increase the chances for appellate success.

Divided into 6 parts, this guide includes information and discussions on: Practicing before the CAVC, How to start the process, The pre-briefing, briefing, and post-briefing processes

Whether you are new to handling appeals to CAVC or a seasoned practitioner, you will not want to be without this invaluable guidebook.

2013 6 x 9 126 pages
PC 5010075
\$69.96
AL Members \$54.95