Administrative Agencies

- Executive Branch
- Established by legislatures
- Often associated with a Cabinet position
- Conduct legislative, executive, and judicial types of activities
- Exist on both federal and state levels
Figure 1. Federal Rulemaking Process

Congressional action

Federal Register

Regulations.gov

Federal Register

Codified in CFR

* The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) reviews only significant rules, and does not review any rules submitted by independent regulatory agencies.
Creation of Agencies

- Legislature passes enabling statute
- Enabling statute
  - Creates the agency
  - Defines its regulatory mission and powers
  - Defines agency procedures (sometimes)
- Federal
  - Administrative Procedure Act
  - Governs agency procedures
- New York
  - State Administrative Procedure Act
  - N.Y. A.P.A. §§ 100 – 501 (McKinney 2016)
Enabling Statute Examples

- **U.S. Dept. of Agriculture**
  - “There shall be at the seat of government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, rural development, aquaculture, and human nutrition, in the most general and comprehensive sense of those terms, and to procure, propagate, and distribute among the people new and valuable seeds and plants.” 7 U.S.C. § 2201.

- **N.Y. Dept. of Agriculture and Markets**
  - Designated “as the agency to carry out the responsibilities of the Commissioner and Department of Health in relation to inspecting and supervising the production, handling, storage, transportation, sale or resale of milk and cream, including the issuance of permits pursuant to Section 1420 of the Public Health Law and the State Sanitary Code (10 NYCRR Part 3) for the shipment, transportation or importation into this State of any milk or cream for sale, resale or distribution.” N.Y. Comp. Codes R. & Regs. tit. 1, Ch. I, Subch. A, Refs & Annos.
Types of Federal Agencies

- Executive Branch agencies
  - Under direct control of the President
  - Department of Agriculture
    - Regulations
- Independent Administrative Agencies
  - President appoints Commissioners
  - Include independent regulatory commissions
  - Farm Credit Administration
New York Agencies

- N.Y. Constitution limits number of civil departments to 20
  - N.Y. Const. Art. 5 §2.
- All department heads appointed by the Governor with the advice and consent of the Senate
  - Except for the Dept. of Education, whose head is appointed by the Board of Regents.
Roles of Administrative Agencies

- **Legislative**
  - Rulemaking authority
  - Congress enacts enabling statutes that
    - Delegate authority to promulgate regulations to agencies and
    - Establish scope of agency authority
  - Executive Order may also delegate authority to promulgate regulations to administrative agencies.

- **Judicial**
  - Power to hear and settle disputes arising from the regulation or the enabling statute.

- **Executive**
  - Power to investigate and prosecute violators of regulations.
Information about Agencies

- Federal
  - United States Government Manual
  - Federal Regulatory Directory (JK610 .F29 Reference)
  - Reginfo
    - Office of Management and Budget

- New York
  - Agency websites
  - New York State Government 2d ed. (JK3416 .W37 2006 Reference)
  - New York Red Book (JK3430 .N5 Reference)
  - New York State Directory (JK3430 .N52 Reference)
Forms of Administrative Law

- Rules or regulations
  - Terms used interchangeably
- Administrative decisions
  - Adjudicate controversies arising out of the interpretation of statutes or regulations
  - Issued in the same manner as court decisions
- Executive orders
  - Issued by the President (federal) and Governor (state)
Other Agency Actions

- Licenses
  - Permits, certificates, other types of permission
- Advisory opinions
  - Authoritative, but non-binding, interpretations of statutes and regulations
- Orders
  - Final disposition of any agency action, except rulemaking
Rules and Regulations

- **Notice of Proposed Rulemaking (NPRM)**
  - Federal
    - Reviewed by Office of Management and Budget under Executive Order 12866
    - Published in the Federal Register
    - Comments submitted from public and interested parties
    - [Regulations.gov](https://www.regulations.gov)
  - New York
    - Published in [State Register](https://www.stateregister.ny.gov) only if fewer than 2000 words
      - Summary of proposed rules >2,000 words
      - Comments submitted from public and interested parties

- **Final regulations**
  - Federal
    - Published in the Federal Register
    - Codified in the Code of Federal Regulations
  - New York
    - Codified in New York Official Compilation of Codes, Rules, and Regulations (NYCRR)
Federal Register

- **Office of the Federal Register**
- Official daily publication for
  - Rules
  - Proposed rules
  - Notices of Federal agencies and organizations
  - Executive orders and other presidential documents

- **Unified Agenda**
  - Semiannual (usually April and October)
  - Summarizes rules and proposed rules federal agency might issue over the next 6 months

- **Availability**
  - Reginfo
  - FDSys (browse to find UA)
  - GovInfo
  - Individual agency website, e.g. Dept. of Agriculture
Federal Register Availability

- Print
- FDSys
  - Updated daily
  - 1970 – present
- GovInfo
  - 1970 - present
- Federal Register
  - User friendly version
  - Create account, select agency, subscribe to email updates
- Westlaw
- Lexis
- HeinOnline
  - Coverage for 1936 – present
- Regulations.gov
  - Proposed rules, allows public comment
New York State Register

- Official weekly publication for
  - Proposed rules fewer than 2,000 words
  - Summaries of proposed rules > 2,000 words
  - Notices of state agencies and organizations
  - Executive orders
  - Lists of abandoned property
  - Miscellaneous notices

- **Regulatory Agenda**
  - Semiannual (usually January and June)
  - Summarizes rules and proposed rules agency might issue over next 6 months
  - Published in State Register
  - Dept. of Health agenda
N.Y. State Register Availability

- Print
- **Dept. of State**
  - Updated weekly
  - 2005 - present
- **Westlaw**
  - New York Administrative Register
  - Regulation tracking
- **Lexis**
  - Regulation tracking
- **HeinOnline**
  - 1979 (vol. 1) - present
Code of Federal Regulations (C.F.R.)

- Organized into 50 titles
  - Subdivided by chapters, subchapters, parts, and sections
- Codifies rules and regulations
- C.F.R. Title 7 (Agriculture)
- C.F.R. Title 21 (Food and Drugs)
- 16 C.F.R. Pts. 500-503 (Food labeling)
- 21 C.F.R. Pt. 101 (Food labeling)
C.F.R. Availability

- **FDSys**
- **GovInfo**
- **e-CFR**
  - Incorporates changes to regulations from Federal Register. Not considered official.
- **Westlaw**
- **Lexis**
- **HeinOnline**
  - 1938 - present
- Agency websites
  - **USDA**
  - **FDA**
New York Official Compilation of Codes, Rules & Regulations (NYCRR)

- Organized into 23 titles
- Subdivided by subtitles, chapters, subchapters, parts, sections
- Codifies rules and regulations
NYCRR Availability

- N.Y. Dept. of State, Division of Administrative Rules
- Westlaw
  - Both official and unofficial compilations
- Lexis
- Agency websites
  - Dept. of Health
Federal Administrative Decisions

- Quasi-judicial function of agencies
- **Pace Law Library Federal Administrative Decisions and Opinions**
  - Links to agency websites
- Agency websites
  - [USA.gov](https://www.usa.gov) A-Z List of Agencies
- **Westlaw**
  - Federal administrative decisions and guidance
- **Lexis**
  - Search all or individual agencies
New York State Attorney General Opinions

- Formal opinions
  - Requested by state agencies
- Informal opinions
  - Requested by local governments
- Availability
  - Print: Opinions of the Attorney General
  - Attorney General website (1995-present)
  - HeinOnline (1872-present)
  - Lexis
  - Westlaw
New York Agency Decisions Availability

- Print
- Agency websites
  - Dept. of Environmental Conservation
    - ALJ Decisions
- Lexis
  - Search all or individual agencies
- Westlaw
  - Search all or individual agencies
Executive Documents

- Executive Orders
  - Issued by the President or Governor
  - Direct and govern activities of government officials and agencies
  - Numbered sequentially
- Proclamations
  - Content frequently relates to ceremonial occasions
  - Numbered sequentially
Presidential Documents

- Title 3 of the Code of Federal Regulations
- White House website
- Compilation of Presidential Documents (GovInfo)
- Public Papers of the President (GovInfo)
- Lexis
  - Presidential documents and executive orders
- Westlaw
  - Presidential documents
- HeinOnline
  - Weekly Compilation (1965-2009)
  - Daily Compilation (2009 – present)
Gubernatorial Documents

- Title 9 of the NYCRR
- Executive Orders (Governor’s website)
  - Filter by executive orders
- Westlaw
  - Netscan executive orders
  - Use advanced search to specify jurisdiction
Federal Secondary Sources

- **Administrative Law Practice and Procedure**
  - Single volume, covers federal agencies and rulemaking (Westlaw)

- **Administrative Law & Practice**
  - Covers all aspects of dealing with agencies, state and federal (Westlaw)

- **West's Federal Administrative Practice**
  - Provides practical guidance and assistance in handling matters before Federal departments and administrative agencies (Westlaw)

- **Administrative Law**
  - Analyzes all aspects of administrative law and the administrative process (Lexis)
N.J. & N.Y. Secondary Sources

- Administrative Law & Practice
  - New Jersey Practice Series (Westlaw)