

## Administrative Agencies and Law In New York State

Note: Lexis Advance and Westlaw paid subscription resources, as well freely available public Internet resources are featured below.

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## Definition

*Agency: 3. An official body, esp. within the government, with the authority to implement and administer particular legislation. Also termed (in sense 3) government agency; administrative agency; public agency; regulatory agency.* AGENCY, Black's Law Dictionary (10th ed. 2014)

*Executive agency (1850) An executive-branch department whose activities are subject to statute and whose contracts are subject to judicial review.* EXECUTIVE AGENCY, Black's Law Dictionary (10th ed. 2014)

## Role of Agencies

Administrative law results from the growth in administrative agencies which have extensive investigative, rule making, and adjudicative powers that represent a fusion of the various powers of government. Administrative procedure is codified in New York by the State Administrative Procedure Act.

2 N.Y. Jur. 2d Administrative Law § 2

## Power to Create Agencies

- The New York State Constitution limits the number of civil department in the state governments to twenty. NY Const, art V, § 2.
- Departments may contain divisions. For instance, the Executive Department has ten divisions authorized by Exec Law § 31
- Administrative agencies, boards and commissions are created by the legislature by the power granted in NY Const, art V, § 3. The governor, when authorized by statute, may create an agency.

## Identifying Agencies

- The [NYC Green Book Online](#)
- New York state has two websites listing agencies. A general [link](#) and a [full](#) listing.
- New York State Statutes Index (Westlaw). Suggested entries: Agents and Agencies, Governmental Agencies, Local Agency, Interstate Compacts, Interstate Authorities, Interstate Commissions.
- The New York State maintains [a page](#) listing state government websites and publications with links to the NYSL Digital Collection
- The New York Red Book. May be held by some libraries. Check Library catalog for holdings and locations.
- New York Lawyers Diary and Manual. Check Library catalog for holdings.
- The State Yellow Book. Check Library catalog for holdings.

## Agency Powers

An agency's powers are determined by its authorizing statute. Authorizing statutes are the laws creating the agency, board, or commission. NY Jur 2d, Administrative Law explains the powers granted to administrative agencies. The two powers explained in this handout will be rule making and adjudication (the process of deciding a case – CourtHelp Glossary).

## What is a Rule and Regulation? How does it differ from a law?

- Laws are passed by the legislature; agencies make rules and regulations.
- The legislature assigns to agencies the tasks of enacting the law. The legislature gives the agency the authority to make rules and regulations.
- In New York, the word rule is used most often, but the terms rules and regulation are interchangeable.

## Rule making

- Agencies must follow the rule making process. The rule making process is a procedure that notifies the public of proposed rules and allows for public comment. The agency reviews the public comments, makes changes, and then issues the final rule. Rules are then organized by subject in a code.
- Proposed rules are published weekly in the New York State Register. If the proposed rule is longer than 2000 words, it must be summarized.
- The weekly register includes a section called Action Pending Index that lists pending rules.
- A cumulative index lists the status of pending rules and the date notice was published in the State Register.
- Once the rule has been adopted, it is published in the New York Code of Rules and Regulations (NYCRR).
- For a detailed explanation of the rule making process go to the Secretary of State Div of Administrative Rules page listing the publications below:
  - [Rule making in New York: How to prepare SAPA notices for publication in the State Register; How to file adopted rules for publication in the Official NYCRR](#)
  - [What is Rule Making in New York?](#)
  - [Rule Making Process](#)
- Laws governing rule making:
  - State Administrative Procedure Act (SAPA),
  - Exec Law, Art 6-A
  - and other authorizing statutes cited in the references for the above two laws.

## New York Register

- The New York Secretary of State publishes the New York State Register every week. The print subscription is available for a fee. A free online version is posted on the Div. of Administrative Rules page. The Register contains:
  - Rule Making Activities
  - Securities Offerings
  - Advertisements for Bidders/Contracts
  - Miscellaneous Notices/Hearings
  - Court Notices
  - Governor's Executive Orders (full text)
  - Attorney General Opinions (summaries)
  - Notices of Availability of State and Federal Funds
  - Financial Reports of the State of New York
  - Regulatory Agendas
  - Rule Reviews
- [New York State Library](#) has archived the New York State Register back to 1979 in the State Documents Digital Collection. The files reproduce in pdf-format images of the printed issues.
- [New York Secretary of State](#) has posted of the New York State Issues from 2003 to date (collectively searchable from 2007 to date). The files reproduce in pdf-format images of the printed issues
- Lexis Advance and Westlaw provide the New York State Register in searchable formats, but do not reproduce the image of the printed text. The commercial databases' back files are not as comprehensive as the New York Library's Digital version and are not as current as the Secretary's State's website. On May 30, 2017, 3 pm, the Secretary of State had posted the May 31, 2017 issue; both Lexis Advance and Westlaw had only the May 24, 2017 issue.
  - Lexis Advance New York State Register (Dec 3, 1997- ) Updated within one week of publication. Typing New York State Register in the query box retrieves an option to select that file. After selecting that file, you can search all documents, table of contents only, or selected the advanced search to limit the search by date or field.
  - Westlaw New York State Administrative Register is the name for the New York State Register. Typing New York State Register in the query box will retrieve an option to select the New York Administrative Register. After selecting this file, a searching template appears with searching options by field or keyword. E-mail sent to reference attorneys for scope note to include beginning date of coverage.

### New York Code of Rules and Regulations (NYCRR)

- The NYCRR prints the full text of agency rules and regulations adopted under SAPA.
- The effective date for a rule is the date of publication in the New York State Register, not publication in the NYCRR.
- Materials incorporated by reference are available in depository libraries across the state; some information may be available on public websites.
- When deciding which resource to use - the print edition of NYCRR regulatory TEXT is considered "official." Print versions are available in depository libraries across the state.

### Online NYCRR Versions

- The Secretary of State provides a free, on-line version of the [NYCRR](#) maintained by Thomson Reuters. It is unofficial which means it cannot be submitted as evidence.
- Lexis Advance Unofficial Version.
  - Typing NYCRR in the query box retrieves an option to select NY- New York Codes, Rules and Regulations.
  - The NYCRR can be shepardized for citing cases and secondary materials.
  - Archived versions of a section may be available back to 2002.
- Westlaw Typing NYCRR in the query box gives a choice for two versions of the NYCRR: Unofficial and official
- Westlaw Unofficial NYCRR
  - Archived versions go back to 2002
  - Includes History and Citing References
  - The unofficial version can be browsed by table of contents
- Westlaw Official NYCRR Version
  - Can search text, but cannot browse by table of contents.
  - Historical note and case notes provided. No citation service available.

## Guidance Documents

### Definition:

- (a) A guidance document means any guideline, memorandum or similar document prepared by an agency that provides general information or guidance to assist regulated parties in complying with any statute, rule or other legal requirement, but shall not include documents that concern only the internal management of the agency. 19 NYCRR 265.1
- At least once a year, agencies are required to submit to the Secretary of State for publication in the New York State Register a list of all guidance documents and where the public may review these. If all guidance documents are available on the agency's website, the Secretary of State will exempt the agency from the annual publication requirement.
- [Rule Making in New York](#) Ch 8 Guidance Documents for more information
- SAPA 202-e Guidance Documents Availability to Public

## Legal Opinions and Declaratory Rulings

- The internet has improved access to the legal rulings of agencies. Materials that were once limited to depository libraries are now posted on agency websites. The agency websites may not provide sophisticated searching capabilities or citation services. Older materials may still need to be obtained from a depository library.
- SAPA § 307 (3) (a) describes the finding tools required by agencies:
 

Each agency shall maintain an index by name and subject of all written final decisions, determinations and orders rendered by the agency in adjudicatory proceedings. For purposes of this subdivision, such index shall also include by name and subject all written final decisions, determinations and orders rendered by the agency pursuant to a statute providing any party an opportunity to be heard, other than a rule making. Such index and the text of any such written final decision, determination or order shall be available for public inspection and copying. Each decision, determination and order shall be indexed within sixty days after having been rendered
- Under SAPA § 204, upon request, an agency may interpret its rules. This is called a declaratory ruling. These rulings may be available online or in print in selected law library.
- Westlaw and Lexis Advance have legal opinions and declaratory rulings for selective agencies.

Source	Lexis Advance	Westlaw	Agency's Website
Attorney General Opinions	1821	1940-	1995-
Banking Department Staff Enforcement Actions*	1968-	2000-	
Commission on Judicial Conduct Disciplinary Opinions	1978-	1976-	1978
Commissioner of Education Decisions	1991-	1991-	1991-
Comptroller Opinions	1977-	1977-	1988-
Dept of Environmental Conservation Declaratory Rulings			1978-
Dept of Financial Services – Banking-related Interpretations*			1966-
Dept of Financial Services – Insurance-related Opinions*			2000-2011
Environmental Administrative Decisions	Dept of Envir. Conser. begins in 1936 Freshwater Wetlands Appeals Board 1988-	Dept of Envir. Conser. begins in 1936 Freshwater Wetlands Appeals Board begins in 1976	1992-
Insurance Bulletins*	1925-	1924-	
Insurance Counsel Opinions*	Selected coverage 1990-1999; complete 200-2011. No longer updated. An archived file.		
Judicial Ethics Opinions	1978-	1976-	
Medical Board Administrative Decisions	2000- Selected 1992-2000.	1989-	
Public Employee Reporter		1967-	
Public Employment Relations Board	1985-		
Public Officials Ethics Opinions		1988	

Public Service Commission Decisions	1984- NY State Board on Electric Generation Siting and the Environment 1988-	Public Service Commission begins 1953 State Courts begins in 1799, but earliest decisions are from 1877	
Taxation Administrative Decisions	1983-	1960- Selected earlier documents	
Workers' Compensation Administrative Decisions	1999-	1985- Selected earlier documents	
Workers' Compensation Decisions, LRP	1990-		
Dept of Finance Services -- New York Market Conduct Examinations*	1998-2015		
New York Securities No-Action Letters	1991-		
New York State Issues' Allocation Percentages --	Current		
New York State Campaign Finance Receipts	1985-1995		
US Customs & Border Protection Rulings – NY Series	1988		

- Effective on October 3, 2011, all functions and authority of the Banking Department and Insurance Department transferred to the Department of Financial Services



## Appealing Agencies' Decisions

### Lexis Advance

- Bender's Forms for the Civil Practice, CPLR Article 78 Proceedings Against Body or Officer
- Bender's Forms of Pleading, Section 537 Article 78
- Medinas Bostwick Practice Manual, Ch 29 Article 78 – Proceedings.
- New York Civil Practice: CPRL P 7801.
- NY Jur 2d, Article 78 and Related Proceedings

### Westlaw

- 24B Carmody-Wait 2d Ch 145 Proceeding Against a Body or Officer (Westlaw)
- 6 NY Jur,2d, Article 78 and Related Proceedings
- 4E NY Prac Com Litig in New York State Courts, Ch 116 CPLR Article 78 Challenges to Administrative Determinations (WestLaw)
- Siegel's New York Practice, Ch 20 Special Proceedings
- West's McKinney's Forms Index Article 78 Proceedings
- 4 West's McKinney's Forms Civil Practice Law and Rules, Ch 10 Special Proceedings and Special Purpose Actions

### Research Guides

William H Manz, Researching administrative decisions, declaratory rulings and advisory opinions, 81 NY St BJ 44 (Jan 2009)

William H. Manz, Gibson's New York Legal Research Guide 3d ed. William S. Hein & Co., Inc.: Buffalo, New York, 2004

### Treatises

#### Lexis Advance

Environmental Impact Review in New York  
 Environmental Law in New York  
 New Appleman New York Insurance law, 2d ed  
 New York Employment Law  
 New York Jurisprudence, Administrative law  
 New York Jurisprudence, State of New York  
 New York Law School Law Review  
 NY State Tax materials  
 New York Workers' Compensation Handbook  
 Warren's Weed New York Real Property  
 White, New York Business Entities

## Westlaw

Employment Law in New York

Environmental Law & Regulation in New York

New York Elder Law and Special Needs Practice

New York Jurisprudence, Administrative Law

New York Jurisprudence, State of New York

New York State Administrative Procedure and Practice (not available online)

New York Zoning Law & Practice, Fourth Edition

New York Workers' Compensation