

**Administrative Law, Fall 2021**  
**MW 9:10-10:50 a.m.**

**Prof. Robin Knauer Maril**

**Email:** [rkmaril@willamette.edu](mailto:rkmaril@willamette.edu)

**Office Hours:** MW 11:15 a.m.- 12:30 p.m.

**SYLLABUS & FIRST ASSIGNMENT**

**Required Materials:**

Text (in the bookstore): Sharpe, J. C. (2021). *Administrative law: A Lifecycle Approach*. (Aspen casebook series). Wolters Kluwer. Several classes will focus on a case study. These materials will be posted alongside other supplemental resources on the class's WISE website.

**Learning Outcomes:**

By the conclusion of this class, students will have learned about the major legal problems and processes associated with federal administrative law. Students will understand the place of administrative agencies within the government, as well as how constitutional, statutory and regulatory provisions guide those entities' relationships with each other and the American public. Students will learn how to apply and interpret statutes and rules, and will understand the basic forms and processes of administrative adjudication.

**Assessment:**

Grades are based on student performance on the 3 ½ hour final exam, which is open note and open book on terms to be discussed later in the semester. Students who voluntarily engage in the discussion in a respectful, helpful, and thoughtful basis may receive a grade enhancement of one-third a grade at the discretion of the instructor.

**Preparation & Participation:**

I will cold call on a certain number of students each class. If you are unable to prepare, please email me 30 minutes prior to the start of class to avoid being called on. I understand that life happens, especially now. You may request 3 "passes" throughout the semester.

**Attendance:**

All students are expected to comply with the law school's attendance policy (i.e., no more than 6 absences in this class this semester). Students are also expected to be on time for class; students who are regularly late to class (or regularly leave class early) may be reported to the Associate Dean for Student Affairs for appropriate action.

**Willamette Nondiscrimination Policy:**

Willamette University is a diverse community that provides equal opportunity in employment, activities, and its academic programs. The university shall not discriminate on the basis of race, color, religion, sex, national origin, marital status, veteran status, actual or perceived sexual orientation, gender identity, gender

expression, or status with regard to pregnancy, disability or age. Willamette is firmly committed to adhere to the letter and spirit of all federal and state equal opportunity and civil rights laws.

### **Feedback and Office Hours:**

I welcome feedback and thoughts throughout the course regarding the amount and nature of the work, areas that need more explanation or time, as well as my approach to the class as a whole or individual topics. Please don't hesitate to email, call, or stop by office hours to share your thoughts.

### **8/23 Class 1**

#### **Introduction to the Administrative State and Introduction to Nondelegation**

##### *Milestones in the Evolution of the Administrative State*

Susan Dudley, available on WISE

CB 37-41

*Overview of the Modern Administrative State 1. Organization*

##### *Presidential Power Surges*

Erin Peterson, available on WISE

CB 67-69

*Agency Creation and Delegation of Powers by Congress*

### **8/25 Class 2**

#### **Separation of Powers and Nondelegation**

CB 78-85 (Skim)

*2. The New Deal Cases*

CB 87-91

*3. The Modern Cases*

CB 91-95

*American Trucking Association v. Environmental Protection Agency (1999)*

CB 95-101

*Whitman v. American Trucking Association, Inc. (2001)*

CB 110-111

*c. Recent Developments: The War over Delegation*

Optional Listen: [Deep Dive Episode 61, Gundy v. United States: Revisiting the Nondelegation Doctrine, or Not?](#)

### **8/30 Class 3 Rulemaking and Adjudication: Introduction to Agency Action**

##### *The Federal Rulemaking Process: An Overview* Pages 1-6 ½

Congressional Research Service, Available on Wise

CB 22-25

*6. The Administrative Procedure Act*

CB 155-158

*The Administrative Decision-Making Process*

CB 159-164

*Name That Process: Rulemaking or Adjudication*

CB 166-169

*Choice of Policymaking Tools*

CB 257-259

*Formal Rulemaking*

We will cover exceptions to informal rulemaking requirements in classes 14 and 15.

#### **9/1 Class 4**

##### **Informal Rulemaking**

Case Study: *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*. 84 CFR 23170

Beginning of Case Study: Pre-NPRM: Whose agenda is it anyway?

Materials available on WISE.

#### **9/8 Class 5**

##### **Informal Rulemaking**

Case Study: *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*. 84 CFR 23170

Publication of NPRM

Materials available on WISE.

#### **9/13 Class 6**

##### **Informal Rulemaking**

Case Study: *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*. 84 CFR 23170

Publication of NPRM Continued

Materials available on WISE.

Limits on Advocacy and Requisite Notice

CB 286-293

*HBO v. FCC*

CB 293-306

*Sierra Club v. Costle*

CB 257-282

*Chocolate Manufacturers v. Block*

*NY v. HHS 109-115* (Available on WISE)

*VII. Was the Final Rule's Definition of "Discrimination" a Logical Outgrowth of the Proposed Rule?*

#### **9/15 Class 7**

##### **Publication of Final Rule**

Challenging a Final Rule: Threshold Questions-- Constitutional Standing and Ripeness

CB 742-745

*Standing in the Modern Era*

CB 745-752

*Lujan v. Defenders of Wildlife* (majority opinion)

CB 833-838

*Abbott Laboratories v. Gardner*

*NY v. HHS* 118-122 (Available on WISE)

1. *Ripeness*

**9/20 Class 8**

**Publication of Final Rule**

Challenging a Final Rule: Threshold Questions-- Exhaustion of Administrative Remedies, Selecting a Remedial Forum

CB 872-881

*McCarthy v. Madigan*

CB 881-886

*Darby v. Cisneros*

CB 890-895

*Wagner & Brown v. ANR Pipeline Co.*

**9/22 Class 9**

**Publication of Final Rule**

Challenging a Final Rule: Scope of Judicial Review

CB 896-898

*B. Scope of Judicial Review*

CB 898-900

*Citizens to Preserve Overton Park, Inc. v. Volpe*

Arbitrary and Capricious

CB 904-915

*Motor Vehicle Manufacturers Association v. State Farm*

*NY v. HHS* 78-89 (Available on WISE)

*VI. Was HHS's Application of the Rule Arbitrary and Capricious*

**9/27 Class 10**

**Publication of a Final Rule**

Challenging a Final Rule: Explanation and Agency Decision Making

CB 919-929

*Commerce v. New York* (majority opinion)

Changes in Policy

CB 935-944

*FCC v. Fox*  
*NY v. HHS* 90-103  
2. *HHS's Explanation for its Policy Change*

### **9/29 Class 11**

#### **Publication of a Final Rule**

##### Challenging a Final Rule: Statutory Interpretation

CB 972-976

2. *Review of Agency Statutory Interpretation*

CB 980-989

*Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.*

CB 993-1001

*U.S. v. Mead* (majority opinion)

CB 1013-1018

*King v. Burwell*

### **10/4 Class 12**

#### **Publication of a Final Rule**

##### Challenging a Final Rule: Statutory Interpretation

CB 1041-1048

*Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA*

CB 1050-1058

*National Cable & Telecommunications Association v. Brand X Internet Services*

CB 1062-1075

*Kisor v. Wilkie*

### **10/6 Class 13**

#### **Publication of a Final Rule**

##### Challenging a Final Rule

*NY v. HHS* 39-69 (Available on WISE)

*IV. Did HHS Exceed its Statutory Authority in Promulgating the Rule*

Break Out Exercise

### **10/11 Class 14**

#### **Avoiding Notice and Comment: Exceptions to APA Requirements**

##### Interpretive v. Substantive Rules

CB 215-224

*National Family Planning and Reproductive Health Association, Inc. v. Sullivan*

CB 224-230

*Hoctor v. U.S.D.A.*

*NY v. HHS* 30-37 (Available on WISE)

### **10/13 Class 15**

#### **Avoiding Notice and Comment: Exceptions to APA Requirements**

##### Reinterpretation of agency rules

CB 235-241

*Perez v. Mortgage Bankers Association*

##### Rules of Organization, Procedure, or Practice

CB 243-246

*Public Citizen v. Department of State*

##### Good Cause

CB 250-255

*Mack Trucks, Inc. v. EPA*

### **10/18 Class 16**

#### **Subregulatory Guidance and Advocacy and Review**

- Materials and reading TBA

### **10/20 Class 17**

#### **Adjudication**

CB 347-355

*Chapter 6 Introduction*

CB 355-360

*Dominion Energy Brayton Point, LLC v. Johnson*

CB 388-392

*Steadman v. SEC*

### **10/25 Class 18**

#### **Informal Adjudication**

CB 395-401

*Citizens to Preserve Overton Park, Inc. v. Volpe*

Guest Lecturer: Representing low income clients in administrative law setting

### **10/27 Class 19**

#### **Due Process**

CB 409-413

*Chapter 7 Introduction and A. Notice*

CB 413-418

*General Electric Co. v. EPA* GE v. EPA

CB 421-429

*Goldberg v. Kelly*

**11/1 Class 20**

**Due Process**

Property Interests

CB 432-438

*Board of Regents v. Roth*

CB 438-441

*Perry v. Sniderman*

CB 443-450

*O'Bannon v. Town Court Nursing Center*

Introduction to Liberty Interests

CB 461-464

*The Interests Protected: Liberty Interests*

**11/3 Class 21**

**Due Process**

Liberty Interests

CB 465-472

*Hill v. Borough of Kutztown*

CB 474-482

*Kerry v. Din*

CB 489-492

*Sandin v. Connor*

CB 493-498

*Wilkinsin v. Austin*

**11/8 Class 22**

**Due Process**

CB 502-513

*Mathews v. Eldridge*

CB 513-519

*Ingraham v. Wright*

**11/10 Class 23**

**Congressional Power and Administrative Law**

*Congress's Authority to Influence and Control Executive Branch Agencies*  
[Congressional Research Service](#) (Page numbers to be TBA)

**11/15 Class 24**

**Changing role of the president and the modern managerial president**

Reading and materials TBA

**11/17 Class 25**

**Distinctions Between State Administrative Law and Federal**

Guest Lecturer

**11/29 Class 26 Review**