

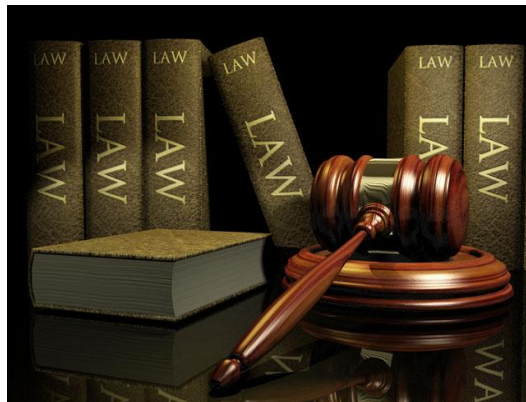


## Laws, Policies and Regulations: Key Terms & Concepts

This fact sheet is designed to shed light on what can often be a confusing area in public health: the differences between legislative and administrative terms such as laws, policies, rules and regulations. The definitions below are brief, general, and restricted to tobacco control examples. At the very least, they illustrate a few of the most common ways federal, state, local and tribal governments use their power and authority to safeguard public health.

### **Q: What's the difference between Congressional Acts and federal regulations?**

**A:** The U.S. Congress passes national laws (often called Acts) to address social or economic needs or problems. The [Clean Air Act](#), the [Food, Drug and Cosmetic Act](#), and the [Family Smoking Prevention and Tobacco Control Act](#) are all examples of landmark federal legislation that addresses public health issues. The appropriate regulatory agencies – those empowered to create and enforce the Acts – are authorized to draft regulations that implement them.<sup>1</sup> These regulations, which have the force of law, fill gaps in the legislation and help agencies carry out their duties and mission, as defined in the Acts. The federal regulations thus stem from the Acts.<sup>2</sup> For instance, the Family Smoking Prevention and Tobacco Control Act authorizes the Food and Drug Administration to create the regulations required to regulate the manufacture, sale and marketing of tobacco products.



### **Q: What are statutes?**

**A:** Just as the U.S. Congress is responsible for creating laws at the national level, state legislatures are responsible for enacting laws at the state level. Statutes are general laws that apply throughout a state. These laws cover many areas, including public health, and also create public health agencies and boards of health, define their missions and core functions, and grant them power.<sup>3</sup> State statutes are compiled and set forth in

publications that go by a variety of names, depending on the state. Examples of these codes of state statutes are the North Dakota Century Code, Montana Code Annotated, and Ohio Revised Code. Although all statutes are laws, not all state laws are statutes. Some examples of state laws that are not statutes are appropriation laws (which are often temporary) and local laws. Statutes, on the other hand, include the general and permanent laws of a state.

**Q. What’s the difference between a statute and an ordinance?**

**A:** Unlike a statute, or state law, an ordinance is a local law that is passed by municipal governing authorities, such as a city council or county board of commissioners. Ordinances also apply only to the local jurisdiction, as opposed to the entire state. Many communities, for example, use tobacco control ordinances to regulate the use, sale or promotion of tobacco products in their localities. Ordinances typically provide an enforcement measure that includes penalties of some type.

**Q. What are board of health regulations?**

**A:** Many state statutes grant local boards of health the authority to pass public health rules and regulations, including tobacco use prevention and control measures. Because the role of boards of health varies by jurisdiction, these measures may be enacted by the board, or by the local governing body for public health, such as a city council, county board of commissioners, or tribal board. For more information about board of health regulations, see the Consortium’s *Tips and Tools*, [Local Board of Health Authority for Tobacco Control](#).

**Q: What’s the difference between statutes and a state’s administrative codes (or rules)?**

**A.** As mentioned above, statutes are state laws passed by the legislature. A state’s administrative codes, on the other hand, are created by an office or agency of the state under authority granted by the legislature. Codes have the force and effect of law and often consist of rules and regulations that interpret the requirements of an office or agency. Statutes and codes can also regulate the same conduct. For example, one state’s smoke-free law might, in part, prohibit smoking in childcare facilities. Another state’s administrative agency might pass rules or regulations that prohibit smoking in child care facilities as a part of its licensing requirements. Although the statutory and administrative code requirements may be similar and are equally legally binding, the implementation and enforcement process, penalties and agents vary, depending on the law or code.

**Q: How does a policy differ from a law?**

**A:** The phrase “public policy” is often used broadly to include laws, rules, and regulations intended to accomplish certain goals. One scholar defines public policy, for example, as “a system of laws, regulatory measures, courses of action, and funding

priorities concerning a given topic promulgated by a governmental entity or its representatives.”<sup>4</sup> Under this definition, tobacco control policies would include such measures as smoke-free ordinances, tobacco advertising restrictions, point-of-sale strategies, tobacco coupon regulations, and cigarette minimum pricing laws.

In a narrower sense, tobacco control policies often differ from tobacco control laws in the way they are enforced and the consequences of noncompliance. For example, violation of a smoke-free parks policy might result in eviction from the premises, but violation of a smoke-free parks ordinance could result in monetary penalties for a petty misdemeanor or even a misdemeanor. Similarly, violation of a worksite smoke-free policy could result in an employee being reprimanded, suspended, or even (in some circumstances) terminated, whereas violations of smoke-free and other tobacco control laws could result in civil and administrative penalties, including the suspension or revocation of business permits or licenses.

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<sup>1</sup> The process of promulgating regulations is called “rulemaking.” The [Administration Procedure Act](#) defines the rulemaking process. See 5 U.S.C. § 11 (2011), available at <http://www.archives.gov/federal-register/laws/administrative-procedure/> (last visited Nov. 1, 2011).

<sup>2</sup> See Robert Longley, *U.S. Government Info: Federal Regulations: The Laws Behind the Acts of Congress* (2011), available at <http://usgovinfo.about.com/od/uscongress/a/fedregulations.htm>.

<sup>3</sup> LAWRENCE C. GOSTIN, *PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT* 23 (2008).

<sup>4</sup> Dean Kirkpatrick, *Definitions of Public Policy and the Law*, available at <http://www.musc.edu/vawprevention/index.html> (last visited Nov. 1, 2011). In the same sense, public policy often refers to a body of principles behind the law, which address common social, moral and economic values and expectations of behavior.