

Sec. 1—The Congress

Legislative Powers

agency can cure an unlawful delegation of legislative power by adopting in its discretion a limiting construction of the statute,”¹³¹ the Court concluded.

Although Congress must ordinarily provide some guidance that indicates broad policy objectives, there is no general prohibition on delegating authority that includes the exercise of policy judgment. In *Mistretta v. United States*,¹³² the Court approved congressional delegations to the United States Sentencing Commission, an independent agency in the judicial branch, to develop and promulgate guidelines binding federal judges and cabining their discretion in sentencing criminal defendants. Although the Court enumerated the standards Congress had provided, it admitted that significant discretion existed with respect to making policy judgments about the relative severity of different crimes and the relative weight of the characteristics of offenders that are to be considered, and stated forthrightly that delegations may carry with them “the need to exercise judgment on matters of policy.”¹³³ A number of cases illustrate the point. For example, the Court has upheld complex economic regulations of industries in instances in which the agencies had first denied possession of such power, had unsuccessfully sought authorization from Congress, and had finally acted without the requested congressional guidance.¹³⁴ The Court has also recognized that, when Administrations change, new officials may have sufficient discretion under governing statutes to change or even reverse agency policies.¹³⁵

It seems therefore reasonably clear that the Court does not require much in the way of standards from Congress. The minimum upon which the Court usually insists is that Congress use a delegation that “sufficiently marks the field within which the Administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will.”¹³⁶ Where the congressional standards are combined with requirements of notice and hearing and statements of findings and considerations by the administrators, so that judicial review under due process standards is pos-

¹³¹ 531 U.S. at 472.

¹³² 488 U.S. 361 (1989).

¹³³ 488 U.S. at 378.

¹³⁴ *E.g.*, *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *American Trucking Ass’n v. Atchison, Topeka & Santa Fe Ry.*, 387 U.S. 397 (1967).

¹³⁵ *Chevron, U.S.A. v. NRDC*, 467 U.S. 837, 842–45, 865–66 (1984) “[A]n agency to which Congress has delegated policymaking responsibilities may, within the limits of that delegation, properly rely upon the incumbent administration’s views of wise policy to inform its judgments.” *Id.* at 865. *See also* *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 42–44, 46–48, 51–57 (1983) (recognizing agency could have reversed its policy but finding reasons not supported on record).

¹³⁶ *Yakus v. United States*, 321 U.S. 414, 425 (1944).