

Sec. 1—The Congress

Legislative Powers

Typically the Court looks to the entire statute to determine whether there is an intelligible standard to guide administrators, and a statute's declaration of policies or statement of purposes can provide the necessary guidance. If a statute's declared policies are not open-ended, then a delegation of authority to implement those policies can be upheld. For example, in *United States v. Rock Royal Co-operative, Inc.*,¹¹² the Court contrasted the NIRA's statement of policy, "couched in most general terms" and found lacking in *Schechter*, with the narrower policy that an agricultural marketing law directed the Secretary of Agriculture to implement.¹¹³ Similarly, the Court found ascertainable standards in the Emergency Price Control Act's conferral of authority to set prices for commodities if their prices had risen in a manner "inconsistent with the purposes of this Act."¹¹⁴

The Court has been notably successful in finding standards that are constitutionally adequate. Standards have been ascertained to exist in such formulations as "just and reasonable,"¹¹⁵ "public interest,"¹¹⁶ "public convenience, interest, or necessity,"¹¹⁷ "unfair methods of competition,"¹¹⁸ and "requisite to protect the public health [with] an adequate margin of safety."¹¹⁹ Thus, in *National Broadcasting Co. v. United States*,¹²⁰ the Court found that the discretion conferred on the Federal Communications Commission to license broadcasting stations to promote the "public interest, convenience, or necessity" conveyed a standard "as complete as the complicated factors for judgment in such a field of delegated authority permit."¹²¹ Yet the regulations upheld were directed to the contractual relations between networks and stations and were designed to reduce the effect of monopoly in the industry, a policy on which the statute was silent.¹²²

¹¹² 307 U.S. 533 (1939).

¹¹³ 307 U.S. at 575. Other guidance in the marketing law limited the terms of implementing orders and specified the covered commodities.

¹¹⁴ *Yakus v. United States*, 321 U.S. 414 (1944) (the principal purpose was to control wartime inflation, and the administrator was directed to give "due consideration" to a specified pre-war base period).

¹¹⁵ *Tagg Bros. & Moorhead v. United States*, 280 U.S. 420 (1930).

¹¹⁶ *New York Central Securities Corp. v. United States*, 287 U.S. 12 (1932).

¹¹⁷ *Federal Radio Comm'n v. Nelson Bros. Bond & Mortgage Co.*, 289 U.S. 266 (1933).

¹¹⁸ *FTC v. Gratz*, 253 U.S. 421 (1920).

¹¹⁹ *Whitman v. American Trucking Ass'ns*, 531 U.S. 547 (2001).

¹²⁰ 319 U.S. 190 (1943).

¹²¹ 319 U.S. at 216.

¹²² Similarly, the promulgation by the FCC of rules creating a "fairness doctrine" and a "right to reply" rule has been sustained, *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), as well as a rule requiring the carrying of anti-smoking commercials. *Banzhaf v. FCC*, 405 F.2d 1082 (D.C. Cir. 1968), *cert. denied sub nom. Tobacco Institute v. FCC*, 396 U.S. 842 (1969).