

Business Law

Text & Exercises *6th Ed.*

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Chapter 40: Administrative Law

Learning Outcomes

- LO1** • Identify how administrative agencies are created.
- LO2** • Outline the rulemaking, investigative, and adjudicative functions of administrative agencies.
- LO3** • State the limitations on agency powers.

Learning Outcomes

LO4

- **Describe federal laws that make agencies accountable through public scrutiny.**

LO5

- **Discuss the relationship between state and federal agencies.**

Introduction

- **Administrative Law is the rules, orders, and decisions of federal, state, and local government agencies established to perform a specific function.**
- **Agencies Provide a Comprehensive Regulatory Scheme.**



Agency Creation and Powers

- **The study of Administrative Law requires an understanding of:**
 - Enabling Legislation. →
 - The Types of Agencies. →

Enabling Legislation

- **Enabling Legislation:** law passed by Congress that specifies the name, purposes, functions, and powers of administrative agency, e.g., the Federal Trade Commission.
- **Federal administrative agencies may exercise only those powers that Congress has delegated to them in enabling legislation.**

Types of Agencies

- **There are two basic types of administrative agencies:**
 - Executive Agencies: cabinet-level departments of the Executive Branch and their sub-departments.
 - Independent Regulatory Agencies: outside major executive departments such as the Federal Aviation Administration or the Federal Communications Commission.

Administrative Process

- **Basic functions of an administrative agency:**
 - Making rules.
 - Investing Activities regulated by the agency.
 - Adjudicating disputes between the agency and those affected by the agency's rules.
- **All federal agencies must follow the Administrative Procedure Act (APA).**

Rulemaking

- **Rulemaking is the formulation of new regulation.**
- **Notice and Comment Rulemaking involves three steps:**
 - Notice of the proposed rulemaking (NPRM).
 - Comment Period.
 - The Final Rule.

Investigation

- **Investigation:** purpose is to ensure that the rule issued is based on a consideration of relevant factors, rather than being arbitrary and capricious.

Investigation

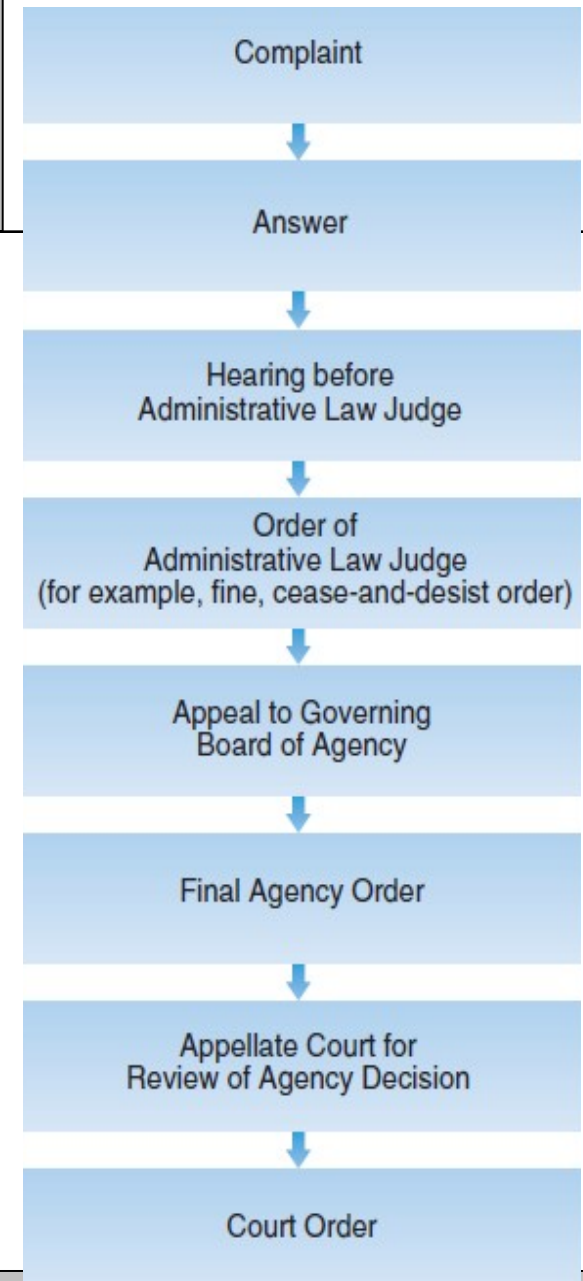
- Federal agencies have powers to:
 - Conduct Inspections and Tests.
 - Issue Subpoenas. Subpoenas *duces tecum* requires production of documents; subpoenas *ad testificandum* requires testimony.
 - Search Warrants: agencies can conduct warrantless searches in limited situations.

Adjudication

- **The law provides a mechanism for administrative adjudication of suspected rule violations:**
 - Negotiated Settlements.
 - Formal Complaints.
 - Hearing Procedures. →
 - Agency Orders and Appeals.

Hearing Procedures

- **Resembles a Trial, except that in an administrative hearing, hearsay evidence can be admitted as evidence.**



Limitations on Agency Powers: Judicial Controls

- A party seeking review must demonstrate standing to sue, there must be actual controversy at issue, and have exhausted all possible administrative remedies.
- Judicial review of agency action will frequently address whether the agency has acted beyond its authority or failed to discharge its responsibility.

Limitations: Executive Controls

- **Executive branch of government exercises control over agencies through:**
 - President power to appoint federal officers, **and**
 - President's veto power.

Limitations: Legislative Controls

- **The Congress exercises controls over agencies powers by:**
 - Enacting and changing enabling legislation.
 - Determining funding for the agency.
 - Investigating agency actions.
 - Freezing agency enforcement efforts before they take effect.
 - Amending the Administrative Procedures Act.

- **A number of pieces of legislation make agencies more accountable through public scrutiny.**
 - Freedom of Information Act. →
 - Government in the Sunshine Act. →
 - Regulatory Flexibility Act. →
 - Small Business Regulatory Enforcement Fairness Act. →

Freedom of Information Act

- **This legislation requires the federal government to disclose certain “records” to “any person” on request, even if no reason is given for the request.**
- **All federal government agencies are required to make their records available electronically.**

Government-in-the-Sunshine Act

- **The legislation requires that “every portion of every meeting of an agency” be open to “public observation.”**
- **Adequate notice of meetings must be given to the public.**
- **Closed meetings are authorized in a limited number of instances.**

Regulatory Flexibility Act

- **Concern over the effects of regulation on the efficiency of businesses, Congress passed the Regulatory Flexibility Act which requires an analysis of the cost a regulation will impose on small business and must consider less burdensome alternatives.**

Small Business Regulatory Enforcement Fairness Act

- **This Act allows Congress to review new federal regulations for at least sixty-day before they can take effect.**



State Administrative Agencies

- **Cooperation and Conflicts between Parallel Federal and State Agencies.**
- **Judicial Review of State Agency Actions.**