

Module 3: Regulation Part I: Foundations, Consumers, and the Environment

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Lesson 3.1 Introduction to Administrative Agencies

[Introduction to Administrative Agencies](#)

What are Administrative Agencies?



Executive branch

Make rules, investigate violations,
enforce rules

Enabling legislation

In this lesson we introduce the concept of administrative agencies, through the rest of this module we'll see how administrative agencies work to regulate various aspects of commerce. But in this lesson we just talk about what administrative agencies are? Which categories that can fall into? In this lesson we introduced the idea of administrative agencies. I got to say, "Administrative agencies is not my favorite topic." But they're super important, in fact most of your encounters with "the government" especially the federal government are impacted a lot more by the work of administrative agencies than by the work of Congress or the president directly. So, administrative agencies do a lot of the heavy lifting in terms of regulating especially business. So in this lesson we're going to sort of introduce the idea of administrative agencies and the types of regulations they can pass, we are going to categories administrative agencies and then in the future lessons in this module will dive into some specifics of how administrative agencies function? How they make rules? How they enforce those rules? Examples of some really prominent administrative agencies that regulate a lot of business type of activities. So, what are administrative agencies? Well they are government entities that are housed in the executive branch. So we have the executive, the legislative, the judicial branch of government all the administrative agencies are housed in the executive branch or have some connection to the executive branch. In general they make rules, investigate violations of those rules and enforce the rules. So basically an agency is a mini government unto itself, it performs legislative tasks by making rules, it performs executive tasks by investigating those rules, it performs a judicial tasks by enforcing those rules. Administrative agencies even have their own little courts inside of them, so they do a lot. Now, every administrative agency only has power because Congress passed some statute that gave it power. That statute that

gives an administrative agency power is called its enabling legislation. No administrative agency can function without some enabling legislation whereby Congress delegate some of its power to this administrative agency to make rules and investigate those rules.

Types of Administrative Agencies



Executive agencies

Independent agencies

Hybrid agencies

In general there are three categories of administrative agencies. First is what's called an executive agency. Executive agencies are firmly housed within the executive branch. The head of the agency serves at the pleasure of the president. Executive agencies generally have to do what the president says, so the president sets the policy for these executive agencies and an example would be like the Federal Bureau of Investigation the FBI. The head of the FBI is appointed by the president, and the president has the freedom to remove the head of the FBI and replace him or her with somebody else. We've seen this happen fairly recently actually, the president has the discretion to do that. Contrast that with an independent agency which is not actually housed with any cabinet level department. Independent agencies are governed not by one head usually, but by a board that typically has to be bipartisan. So take for instance the Federal Trade Commission, it's governed by a board, the board of commissioners. Within the Federal Trade Commission enabling legislation it is stated that the board has to be as bipartisan as possible. So if there are five members of the board no more than three can be from one political party the other two must be from the opposing political party. The president appoints the board members but does not have the power to remove them for any reason. So, this is why it's called an independent agency once the board members for an independent agency have been appointed. They don't serve at the pleasure of the president like the head of the FBI does. So, they are thought to be more independent for the president and therefore less influenced by political whims especially since the board has to be as bipartisan as possible. Then you have this third group which is called a hybrid agency. A hybrid agency takes some characteristics of executive agencies, some characteristics of independent agencies and brings them together. A good example of

this is the Environmental Protection Agency the EPA. We're going to see a lot more about the EPA in a later lesson in this module. But as an example of a hybrid agency the EPA is not housed within any cabinet level department. So that makes it look like an independent agency. But the head of the EPA does serve at the pleasure of the president, who has the power to replace him or her at his discretion. So, that looks like an executive agency so it's kind of a hybrid. So there's two types of hybrid agencies the ones like the EPA that aren't housed within a department but their head serves at the pleasure of the president, or the other kind which is housed in a department but has a governing board that can't be easily replaced by the president.

Agency Powers



Administrative Procedure Act (1946)

So to wrap up this lesson let's talk a little bit about what powers agencies actually have? In general they make regulations or rules to apply statutes so Congress passes a statute. So for instance say, "Congress passes some statute the Clean Water Act, to regulate water purity in the United States." It gives the Environmental Protection Agency the authority to make rules and regulations to enforce the Clean Water Act. So a statute passed by Congress can be pretty long but it can't take into account all circumstances that might arise that need to have a rule related to that act. So, Congress delegates power to an agency and says, "Hey as things come up and you need to interpret this statute and make rules to apply the statute we give you the power to do that." The process by which agencies go about creating these rules is governed by a law called the Administrative Procedure Act which was passed in 1946. It sets forth the rule making process, in the future lesson we're going to delve into this rule making process. What are the rules that an agency has to follow in order to make a regulation that becomes law? We'll see that in a future lesson. Two other laws that are very important to the operations of agencies are the Freedom of Information Act or FOIA and the government in the Sunshine Act. Both of these require agency hearings and agency communications and other matters pertaining to the way agencies operate to be open to the public. So, any member of the public can submit a FOIA request to administrative

agency to find out certain information about how they have gone about making their rules or investigating or enforcing the rules? The government in the Sunshine Act requires most agency hearings to be open to the public. So we're not getting rules that are created in private without public knowledge or public input.

Lesson 3.2 The Rule-Making Process

[The Rule-Making Process](#)

Notice and Comment Rule-Making



1. Notice of proposed regulation
2. Comment period
3. Final rule

In this lesson, we continue our discussion of administrative agencies by taking a closer look at the rule making process. What is the process that an administrative agency must follow in order to adopt a new regulation? In the previous lesson we talked about a broad overview of administrative agencies. What they are, sort of their general function in our governmental system. In this lesson we're going to focus in on the rule making process. Now, we mentioned that, administrative agencies are empowered by Congress to make rules to interpret and enforce various statutes. So, how does that work? Well in general the process use most of the times what's called notice and comment rule-making. Under notice and comment rule-making? There are three steps, the first step is the agency provides notice to the public of their proposed rule, then there is a comment period in which the public is able to submit comments and then the final step is the adoption of the final rule. So, let's take a closer look at each of these three steps.

Notice



Proposed rule published in *Federal Register*

Includes the proposed rule,
enabling legislation, & details about
how to participate

First, the notice period. The administrative agency is required to publish their proposed rule in a document called the Federal Register. The Federal Register is basically the daily newspaper of the Federal Government's, published every single day and it's super long. You can find it online. I don't know if they actually still publish paper versions of or not. If so they're wasting tonnes of paper, because it's really long and boring. But every agency has to publish their proposed rules in the Federal Register, and in their notice it includes the proposed rule along with the enabling legislation that gives the agency the power to propose this rule, along with details about how to participate in the comment period. So, after the publication appears in the Federal Register, we enter into the comment period. And the comment period can last from weeks to months and it varies depending on the agency, the enabling legislation, the type of regulation being proposed, the comment period can really vary.

Comment Period



Anyone can submit comments

Agency must respond to comments
that significantly impact the rule

But during this time, anyone from the public can submit comments. Is it common for average Joes like you and me to submit comments for most proposed rules? Not really, but if you are a business in an industry that is regulated by this agency and you care about the rules that they adopt because they impact your business, then it can be very common for you to submit comments to the agency on proposed rules. Agencies are required to respond to any comments from the public or from the business community that could significantly impact the rule. So if a business raises a legitimate issue that, "Hey this will have negative economic consequences for us." How do you respond to this? The agencies are usually required to respond to those types of comments. Now, that doesn't mean they're required to change the rule, they're just required to respond to them and justify their decisions. After the comment period has ended, the agency is free to proceed to publishing its final rule. So, frequently the proposed rule will be modified a little bit during the comment period, sometimes it's not, sometimes the proposed regulation is what ends up as the final rule.

Final Rule



Initially published in *Federal Register* with justification

Eventually codified in *Code of Federal Regulations* (CFR)

Either way, the final rule again, gets published in the Federal Register. The final rule along with the agency's justification for passing the final rule, get published in the Federal Register. And then eventually the final rule is codified in the Code of Federal Regulations or CFR. The CFR is the complete compilation of all administrative regulations adopted by all federal agencies. It's kind of a compliment to the US code, the US code is the collection of all statutes passed by Congress, the CFR is a collection of all rules adopted by administrative agencies.

Types of Rules



Informal

Formal

Now the process I just described, the notice and comment period is what's also called

informal rule making. This is by far the most common, this is the default method of rule making that all administrative agencies fall. But there are other types of rule-making procedures. So if that was informal, we also have something called the formal process. The formal process only happens if the enabling legislation that gives an agency power to adopt a rule, also specifically requires the use of formal rule-making. The big difference between informal and formal rule-making is that, formal rule making requires a formal hearing. You can also submit comments but, there is a formal hearing where the public, interested parties can actually present testimony, present evidence of the impact of the rule. So, it requires a lot more work of the agency to instead of just soliciting comments which are usually accepted via paper or email or whatever, actually you have to hold a formal hearing which can be a pretty big deal. Other than that all aspects of the formal and informal process are the same, but the formal process requires an actual hearing. Then you have these hybrid rule-making procedures, where the enabling legislation might require some formal information gathering, which could require a hearing but it's not the same as the formal hearing that you get in the formal process. It can all be sort of confusing but just know that there is a type of rule making, that kind of combines the informal and the formal processes. Then some rules are actually exempt from the rule making process entirely. The general rule is that we want the public to be aware of things before they become law and give them a chance to comment on them, but not for everything. So, rules that impact the operations of the military, rules that impact foreign affairs, rules that govern internal management of a federal agency, rules that govern the government's procedures for entering into procurement contracts and that sort of thing. Those are all examples of things that are exempt, an agency can adopt a rule that governs one of those things without any comment from the public whatsoever.

Lesson 3.3 Agency Investigations & Administrative Courts

Agency Investigations & Administrative Courts

Agency Investigations & Courts



Agencies typically investigate
alleged violations of their own rules

Agencies also often have authority
to investigate without allegations of
violations

Agencies have subpoena power

So, in previous lessons we've learned about the nature of administrative agencies and how they make rules. In this lesson we delve a little deeper into the way that administrative agencies investigate violations or alleged violations of those rules and then how they adjudicate disputes in administrative courts. We've already learned a little bit about the nature of administrative agencies, we've learned about how they go about making rules and regulations, those two terms are really sort of interchangeable, agency rules, and agency regulations. In this lesson we're going to talk about how agencies investigate violations of those rules or alleged violations of those rules, and also how they adjudicate disputes and enforce the rules in administrative courts. So, as a general rule, agencies have the power to investigate violations of the rules of the agency's past. This is kind of a weird setup if you think about it because in no other governmental realm does the same agency that makes the rule investigate the violations of the rule. As a general rule, the legislative branch makes rules, the executive branch enforces the rules through its police power, but in an administrative agency, it does all of that within one entity. So, for example, the Securities and Exchange Commission, that's an administrative agency, it makes rules about trading stock and issuing securities. Things like that. But the SEC also investigates violations of its own rules pertaining to trading securities, stocks, bonds, other sorts of securities. Now, an agency does not need to have received some allegation of a violation in order to investigate. Many agencies are empowered to conduct surprise investigations such as OSHA, the Occupational Safety and Health Administration. It is an agency that is tasked with making sure that workplaces are safe in this country and OSHA has the power to just conduct spot checks for the places of business that it regulates. So, actually a long time ago I used to work at a hospital and it was not uncommon at all for

the OSHA representatives to just show up to make sure that OSHA policies were being complied with at the hospital. So, if an agency receives a tip of a potential violation, it can certainly investigate but also they have the power to just conduct investigations in their routine course of business in a lot of instances. Finally, agencies have what we call subpoena power. If you know anything about courts or the litigation process, subpoena power might be familiar to you. But this is the authority that a body has to force somebody to come and testify or for somebody to turn over some documents. So subpoena power is very powerful. Congressional committees have subpoena power, courts have subpoena power. It just means we can force you to come and tell us stuff or we can force you to give us documentation and if you don't, you can be held in contempt and have to sit in jail for a while. So subpoena power is very powerful.

Administrative Courts



Presided over by an ALJ

Narrow scope

Subject to judicial review

Now let's talk about administrative courts. Once an agency has investigated an allegation of a violation or has found a violation during a spot check or something like that, administrative agencies usually also adjudicate these things within their own bodies. So instead of saying, hey, we found a violation, we're going to send you to a regular court. Many times they say, we found a violation, now just come to the court that's right next door, the Administrative Court. Administrative courts are not like regular courts. They're presided over by a person called an Administrative Law Judge, who acts sort of like a judge in traditional court but sort of differently. Administrative Law Judges or ALJs as we call them, are actually employees of the agency. So, right off the bat, there can be questions about bias. If my employer is one party to a dispute and a third party is another party to the dispute and my job is to decide who wins, my employer or this random Joe I've never met in my life. Do you think I could be biased? It's possible. So, this is one reason why administrative courts are actually subject to judicial review because in the case of a biased ALJ, which I'm not saying happens very often, most Administrative Law Judges are very serious about their jobs and do a great job of avoiding bias but still they're employees of one of the parties who appear before them

on a regular basis. Administrative court decisions are subject to judicial review. So, a regular court, a federal court, or in the case of a state administrative agency, a state court can take a look at the ALJ's decisions to ensure that bias wasn't a factor. Now, administrative law courts are very narrow in scope. They can only hear matters pertaining to the issues within the scope of authority of that agency. So I gave the example earlier of the Securities and Exchange Commission. They regulate stock markets and the trading of securities. So, administrative courts within the Securities and Exchange Commission could not hear an environmental protection dispute or anything else that falls outside the scope of that agency's power.

Adjudication Process



Negotiated settlements

Administrative hearing

Initial order

Appeal

Final order

Now once a matter makes it into an administrative courts, the process is sort of similar to regular court and sort of not. Much like regular court, negotiated settlements are really really common in an administrative court setting. The vast majority of lawsuits in regular court and the vast majority of disputes in administrative courts are settled before they ever get to a trial or a formal hearing or anything like that. So in an administrative setting, the agency and the person who's accused of a violation, will negotiate before the actual hearing and often times arrive at some settlement. So, the violator agrees to pay a fine or do whatever, and then the hearing isn't so much a fact finding session but just an approval of their settlement. If they don't settle, they move to what's called an administrative hearing. This is sort of similar to a trial in regular court. The administrative hearing is much less formal though the formal rules of evidence, the Rules of Civil Procedure, those things don't apply in an administrative hearing, and an ALJ is actually much more participatory in the process than a typical judge. In regular court, the judge kind of sits back, let's the parties present their cases, decides questions of should this be admitted as evidence, things like that. In an administrative hearing, the ALJ is much more participatory, can ask questions of the witnesses, can seek out further information. After the hearing is finished, the ALJ will issue what's called the initial order. The initial order is similar to the verdict in a regular lawsuit. It's the ALJ's initial findings in the

dispute. It's called the initial order because it's subject to change but it doesn't change very frequently. The only way an initial order is going to change is if one of the parties appeals that order to regular courts and the regular court decides that the ALJ was wrong. But, this does not happen very often because courts give a lot of deference to decisions of administrative agencies. Even sometimes if the regular court disagrees with the findings of the agency, the court will still give that agency deference. It's very hard to win an appeal from an administrative law decision in regular court but sometimes it happens. I'm not saying it never happens, it's just difficult. So, if your appeal fails or if nobody appeals, then the initial order will become what's called a final order, and the final order could say, someone has to pay a fine or something like that. The final order is the same as the verdict in the trial and it has the force of law and the parties are required to abide by it.

Lesson 3.4 FTC Regulation of Commercial Activity

[FTC Regulation of Commercial Activity](#)

What is the FTC?



Major initiatives

False/Deceptive advertising

Sales

Telemarketing/Spam

In this lesson, we continue our discussion of administrative agencies by focusing in on one specific agency, the Federal Trade Commission, to examine some of the rules that it has made to protect consumers. Okay. We've learned a lot about how administrative agencies work. What are they, how do they make rules, how do they investigate rules, how do they adjudicate disputes. Starting now and for the next several lessons, we're actually going to focusing on a number of specific administrative agencies and learn about the rules that they have adopted to regulate business, protect consumers, protect the environment and that sort of thing. So, in this lesson we're focusing on the FTC, the Federal Trade Commission. The Federal Trade Commission was established in the Federal Trade Commission Act of 1915, so it's a little over 100 years old and it does a lot of things actually. The Federal Trade Commission has one of the broadest set of

tasks of any administered federal administrative agency, including the regulation of false and deceptive advertising, regulation of sales, and we'll talk about what we mean by sales in a minute, the regulation of telemarketing, spam, that kind of stuff. So let's dive into some of the things that the FTC regulates.

False/Deceptive Advertising



Unsubstantiated claims

Statements misleading to a reasonable consumer

Puffery is okay

What about all those obviously false internet ads?

First, false and deceptive advertising. Let me give you an example. Say you have a cereal called Tastews, and Tastews has an advertisement on the box that says, Tastews prevent heart attacks. Now, compare that with a box that says, Tastews contain fiber which is shown to reduce cholesterol, which reduces the risk of heart attack. Now those two ads are trying to get at the same idea, right? Tastews are good for your heart. One of those is probably false or deceptive advertising and one of them probably isn't. So, if you say tastews prevents heart attacks, that might be deceptive. Has there actually been a clinical study done that shows that if you eat Tastews you're protected from heart attacks? Probably not. If you have one that says Tastews contain fiber which is shown to reduce cholesterol which reduces the risk of heart attack, is that substantiated? Well, probably. There's probably been a clinical study that says, well people with an increased fiber intake do show reduced cholesterol. There's probably been another study done that say people with lower cholesterol have a lower risk of heart attack. So, the Federal Trade Commission cares, can you substantiate your claims? If not, it's false or deceptive advertising and so that's why companies are very, very careful about exactly how they word their advertisements, especially when it comes to health claims and things like that. Beyond just health claims, as the FTC regulates false and deceptive advertising, it looks to the question of, is this statement misleading to a reasonable consumer? For instance, there was a big hullabaloo a few years ago about this drink Red Bull. Red Bulls tagline is, Red Bull gives you wings. You probably have heard about this. Someone actually sued Red Bull for deceptive advertising, because they said I drank Red Bull and I didn't grow wings. What's up? Now, this is crazy right? This person is an insane person. But, the FTC if they had been a part of

this lawsuit would have said, look is this statement misleading to a reasonable consumer? No. No reasonable consumer would actually expect to grow wings after drinking a Red Bull. So it wasn't false or deceptive advertising because a reasonable consumer wouldn't actually believe that. Now, one thing that is allowed is what we call mere puffery. This is one of my favorite legal phrases. This is a famous phrase from a court decision that says, mere puffery is allowed in advertisements. So if you say, this car is the greatest car in the whole world and all the women love this car and it's so wonderful. Is that true? I don't know. Maybe or maybe not, but it's mere puffery. You're not making any statements of fact. It's just saying it's great. And that's allowed. You can always puff up your product or your service that you're selling. Now, you might be thinking, okay, the FTC regulates false and deceptive advertising. I'm an internet user. I see ads on the Internet for all sorts of things that are clearly false and deceptive. What's going on? Why aren't those companies put out of business by the FTC because that's its job? Right? Well, the plain facts are that the FTC has limited resources. The Internet is the WorldWest of advertising in business and they simply can't regulate everything. Should most of those ads you see on the Internet probably be eliminated? You know, if we applied the FTC rules, yeah, probably. But it's just hard to do that.

Sales



Mail or Telephone Order
Merchandise Rule

Door-to-door sales & the Cooling-
Off Rule

Major, infrequent purchases

Okay. The second thing the FTC is big on regulating is sales. When we say sales, we usually means sales of products in a certain way. We don't really care if you go to Wall-Mart and buy a toothbrush. The FTC isn't super concerned that you're going to get taken advantage of in that case. But there are some types of sales that the FTC has decided, these types of sales are risky for consumers and there's a higher chance that they could be taken advantage of and so we're going to regulate them a little more strictly. So the first one is mail or telephone order merchandise. The FTC has adopted something called the mail or telephone order merchandise rule which requires businesses that sell you stuff over the phone or via mail to provide you most importantly timely shipping of the goods, a notification of the expected shipping time, a notification if

they can't ship them when they said they were going to ship them and things like this because the FTC noticed, hey a lot of these mail order things they'll call you or you can order something via mail and then maybe they never ship them or maybe they ship them over a long time after you order them and so the FTC said we need a crackdown on this. So they're big in the mail and telephone order merchandise shipping. Also door to door sales. Now, if you're like me you probably think, what in the world is door to door sales? Who buys anything door to door sales anymore? Well, door to door sales actually used to be a much bigger thing. And it actually still does exist, certainly not as much as it used to. But I remember when I was a kid, we'd have vacuum salespeople or whatever showing up to our door, just ringing doorbell saying, "Hey, you want to buy something?" And the FTC has adopted this thing called the door to door sales rule and the cooling off rule that give consumers three days to cancel any contract entered into with a door to door salesperson. Why? Because there's this attitude that when you're face to face with the door to door salesperson, you might not feel comfortable saying no or you might get pressured into something, a lot of door to door sales people are known and notorious for high pressure sales tactics whether it's buying knives or vacuum cleaners are sort of notorious for this. So, the FTC requires any door to door or salespeople to give you three day cooling off period in which you can cancel that contract. And then the third type of sales contract that the FTC wants to regulate are sales of major purchases that you buy very infrequently. And because you buy these infrequently and because they cost a lot of money, it's more likely that you could be taken advantage of, right? Because you're not a sophisticated purchaser or you don't know much about this market because you don't buy it very often, and it's a lot of money. So things like cars, you don't buy cars frequently, most of us, and they cost a lot of money. Funeral services. We hopefully don't buy funeral services very often at all. But they're also pretty expensive. So the FTC has passed a whole series of rules requiring disclosures in many of these types of contracts to protect consumers. So, disclosures of all the added fees and disclosures of when services will be delivered, all sorts of disclosures to protect consumers who generally aren't sophisticated in these types of purchases.

Telemarketing/Spam



Do Not Call Registry

Telemarketing Sales Rule

CAN-SPAM Act

Finally, the FTC has as one of its main goals, the regulation of telemarketing and spam. Now, your first response might be to say, they have failed completely at this. They actually haven't. And this is just a really, really difficult area to regulate, and also their goals at regulating this industry, probably aren't the same as your goals as a consumer. My goal as a consumer is to get zero spam and zero telemarketing calls. The FTC's goal is not that. It actually wants to regulate it such that telemarketing and spam is more fair than nonexistent. So, because honestly from the government's perspective, does a business have the right to market their services to you? Yes, they do. Even if you don't want it, businesses have the right to market their services to you. So the government isn't trying to eliminate unwanted marketing, but just regulate it so that it seems more fair. So, one mechanism the FTC has adopted to regulate this stuff is called the do not call registry. You can go to their Websites and enter your phone number, and if you're on the do not call registries, telemarketers are not supposed to call you at that number. Do some do it and violate it? Yes. But as a general rule, law-abiding telemarketers are not allowed to call numbers on the Do Not Call Registry. Next is the telemarketing sales rule. If a telemarketer calls you and you don't immediately hang up and you actually think about buying something from a telemarketer, the telemarketing sales rule requires a whole bunch of disclosures to be made to you, requires you to give explicit authorization. This is why if you ever are on the phone with any company that's selling you something over the telephone, they are going to most of the time tell you, I'm recording this portion of the conversation, I need your authorization to charge your credit card for this amount for these services. That's because the telemarketing sales rule requires it. Now let's move over to the spam email, unwanted email solicitations. Congress actually has passed this law called, the CAN-SPAM Act. It's a long acronym. What it stands for isn't important. It's basically a title that they concocted so that it fits the acronym of CAN-SPAM, and it has given the FTC power to issue regulations to apply the CAN-SPAM Act. Now, what the CAN-SPAM Act doesn't do, is prohibit spam.

It allows spam but it requires the senders of unsolicited advertising emails to adhere to certain rules. One of those big rules is you have to have an opt out mechanism. So, if you get an email from an organization you say, "How did I get on this mailing list? I don't even know what this is?" If you scroll down to the bottom, it will almost certainly have a little button says, click here to unsubscribe. Now again, are there unscrupulous companies that violate these rules or put you back on the list even after you unsubscribe? Yes there are, but they're acting out of line with the law and the FTC's regulations.

Lesson 3.5 CFPB Regulation of Financial Institutions

CFPB Regulation of Financial Institutions

What is the CFPB?



Very broad authority to regulate
consumer financial transactions

In this lesson we continue our exploration of individual federal executive branch agencies by looking at the Consumer Financial Protection Bureau and the way they protect consumers and their financial transactions. [MUSIC] [SOUND] In this lesson we're going to look at another administrative agency called the CFPB, or the Consumer Financial Protection Bureau. This is one of the newer federal administrative agencies. It was created by the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, more commonly known as the Dodd-Frank Act, and it was intended as a response to a lot of the financial problems that had plagued the economy, especially after the recession of 2008, 2009 that area. But even before that some consumer fraud issues that had occurred in the preceding years. Now, the CFPB, as originally contemplated, had very broad authority to regulate basically every consumer financial transaction ever. And in fact, it was sort of a clearing house to regulate all consumer financial matters. It took laws that had previously been regulated by a whole handful of different federal agencies and it brought them all in-house into one agency with tons of authority. Now, there have been a lot of efforts recently to kind of curb some of the

CFPB's powers, so what will it look like next year or the year after that? Nobody really knows, but it still has some very, very broad authority to govern a lot of consumer financial transactions. So, let's run through a list of some of the really, really important functions the CFPB plays in protecting consumers from big bad banks and things like that. So, we're just going to go through a whole bunch of laws and talk about what the CFPB does to protect consumers.

Sample of CFPB Powers



Mortgage Reform and Anti-Predatory Lending Act

Truth-in-Lending Act (TILA)

Fair Debt Collection Practices Act (FDCPA)

Fair Credit Reporting Act (FCRA) &
Fair and Accurate Credit Transactions Act (FACT)

So first, the Mortgage Reform and Anti-Predatory Lending Act. This is in response to the mortgage crisis that hit our economy in 2008, 2009, 2010 and following. Where we found out that a lot of consumers were given loans that they really shouldn't have had, or that banks were robo-signing loans, or doing all sorts of other fraudulent activities. The Mortgage Reform and Anti-Predatory Lending Act was passed to try and counter that and the CFPB enforces that act. The Truth-in-Lending Act, this is actually an old law, but it requires certain disclosures in consumer loans. How much interest are you going to be paying? What's the total payments you'll be paying, interest and principal, over the life of the loan? Things like that. So that consumers are informed when they borrow money from a lender. The Fair Debt Collection Practices Act, the FDCPA, requires debt collectors to follow certain rules when they're trying to collect overdue debts from consumers, like if a consumer says please don't call my office, you can not call their office. They have to abide by certain regulations, and if debt collectors don't, they face fines and other penalties. The CFPB enforces that. The Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act. The FCRA and FACT, Fair and Accurate Credit Transactions Act, are both statutes that govern the collection of data by credit reporting agencies. So you're probably aware of TransUnion, Equifax, Experian. And you've probably heard of them at least, there's a big data breach in one of these last year. These are agencies that collect information about you and your financial status to give lenders an idea of whether you're credit worthy, basically. And both of these laws govern the collection of that data and give consumers the right to obtain the

information that these credit reporting agencies have on you. Because oftentimes, their files are incorrect.

Sample of CFPB Powers



Fair Credit Billing Act

Equal Credit Opportunity Act

Fair Credit and Charge Card

Disclosure Act & Credit Card

Accountability and Disclosure Act

What else? The Fair Credit Billing Act. This is a law that allows you to dispute items on your credit card statement. So, make sure, if you have a credit card, you gotta go through the statement every month. You have a time period that you can actually call up your credit card company, or most of them have an online form, to say hey, this charge wasn't something that I made. I want to dispute it. And the Fair Credit Billing Act provides a mechanism for credit card companies to respond to those disputes. The Equal Credit Opportunity Act prohibits discrimination in lending. So just as there are a lot of other laws that prohibit discrimination in employment, or in housing, or in public services. The Equal Credit Opportunity Act prohibits discrimination based on your race, your gender, your national origin, your religion. These sorts of things in the provision of credit, meaning lending. So, a lender can't refuse to give you a loan because of the color of your skin. Finally, the Fair Credit and Charge Card Disclosure Act and the Credit Card Accountability and Disclosure Act, known as the Card Act. These are relatively recent laws that regulate credit card marketing and issuance. I spend a lot of my time on a college campus. And every year at the beginning of the year, I used to see this a lot more of this than I do now, but you'd see new students walking around campus and all these credit card companies have tables out there, saying hey, you want a credit card? We'll give you a credit card. And a lot of credit card companies had a reputation for sort of predatory marketing on people who really shouldn't have credit cards, or certainly shouldn't have cards with the limits that they had. These laws tried to curb that and regulate credit card marketing, and issuance of credit cards to consumers who really should have credit cards. [MUSIC]

Lesson 3.6 FDA Regulation of Food, Drugs, & Cosmetics

[FDA Regulation of Food, Drugs, & Cosmetics](#)

What is the FDA?



Food safety

Drugs & medicinal devices

Cosmetics & beauty products

In this lesson we look at the FDA, the Food and Drug Administration, which is a very powerful federal agency that regulates basically everything that can go in your body or on your body. [MUSIC] Here we are in our continuing series on very important federal administrative agencies. And we're going to talk about the FDA, the Food and Drug Administration. It was actually created in 1927, but the main enabling legislation these days that gives the FDA power is the Food, Drug, and Cosmetic Act which was enacted in 1938. Why was the organization created 11 years before its main enabling legislation is a long story. But just know that nowadays the Food, Drug, and Cosmetic Act is the main enabling legislation of the FDA. And it regulates food safety, drugs and medicinal devices, and cosmetics and beauty products. So let's take each one of those in turn.

Food Safety



Prohibition on sale of adulterated foods

Food labeling requirements
(packaged foods & chain restaurants)

Food safety, with regards to food safety, the FDA does a couple of really important things. First, it prohibits the sale of what we call adulterated foods. This is any food that contains a foreign, harmful ingredient, or an additive that's not permitted or not disclosed, or food that is rancid or has otherwise gone bad. The FDA prohibits all of this kind of stuff. In addition to this requires food labeling. Now if you've ever seen a packaged food item, you know that it has this black rectangle on it, right, and it says nutrition information. Foods didn't used to be required to display all this information, in fact it use to be packaged foods didn't have to disclose anything. And then they just had to disclose their ingredients. And now they have to disclose their ingredients and their nutritional information. So how many calories from each of your macronutrients, fats, and carbohydrates, and protein, and all that kind of stuff? The FDA requires that labeling. Also requires the label of all packaged foods to contain the contact information for the manufacturer, so that if you have a problem with it you know who at least made this good.

Drugs & Medicinal Devices



Extensive drug trial process

Categorization of drugs

Restrictions on drug advertising

Moving on to the next big area of regulation that the FDA oversees, drugs and medicinal devices. The FDA requires a really, really extensive trial process before it approves any drugs to be used in consumers in this country. So many stages of clinical trials. You gotta start with animal trials, and then you move on to trials in humans, multiple rounds of this before a drug will be approved for sale on the market. And even then, the FDA categorizes drugs. So some drugs are very highly restricted and can only be obtained with a prescription. And even among prescription drugs some are even more highly regulated than others. And then drugs that have been shown be very, very, very safe can be sold over the counter. These are things like Tylenol and stuff like that that we know has very, very few side effects. The FDA also regulates the advertising of drugs, especially to consumers. It actually didn't used to be the case that pharmaceutical companies could advertise drugs directly to consumers at all. But the FDA, about 20 years ago, lifted that restriction and allowed advertising directly to consumers. But placed rules about mandatory disclosures, disclosures of side effects, all that kind of stuff. So if you see an ad on TV for a drug, you always hear some sort of list of potential side effects. That's because the FDA requires that to accompany any advertisement for a drug to consumers.

Cosmetics & Beauty Products



Required ingredient lists

Notice of harmful ingredients

Prohibition of
mislabeled/misleading/adulterated
products

Now the last thing, or the last real important thing, that the FDA regulates is cosmetics and beauty products. So when we say cosmetics, we all know what that means, makeup, stuff like that, but also any kind of beauty product, deodorant, shampoo, anything you put on your body, lotions, whatever. Cosmetics and beauty products are required to list their ingredients and place any notice of harmful ingredients that might be in the product. And FDA also prohibits the mislabeling or misleading labels or any adulterated products that fall into this cosmetics and beauty products realm. [MUSIC]

Lesson 3.7 EPA Regulation of Pollution
[EPA Regulation of Pollution](#)

What is the EPA?



Regulates air, water, and land
pollution

National Environmental Policy Act

In this final lesson in our series of investigations of individual executive branch administrative agencies, we're going to look at the EPA, the Environmental Protection Agency, and discover the ways that it regulates air, water, and land pollution. Can you put it back on me like landfill or just a big garbage dump for this one. In this lesson, we're going to look at one more administrative agency called the EPA, the Environmental Protection Agency. This was created in 1970, and it basically has the authority to enforce all of the country's environmental laws. You can kind of lump these into three main categories, the regulation of air pollution, water pollution, and land pollution. In addition to passing regulations to control these types of pollution, the EPA also has purview over the National Environmental Policy Act, which is a law that requires all governmental agencies to file what's called an environmental impact statement with the EPA for any action they take that could impact the environment. So, if I'm a governmental agency and I want to build a new building, but it's on wetlands and some endangered species might be impacted, I have to file an environmental impact statement with the EPA and give them the chance to review it to see if I'm allowed to actually build there or something like that.

Air Pollution



Clean Air Act

Ozone & greenhouse gases, etc.

Stationary sources v. mobile
sources

Penalties for violations

So, I'll start with air pollution. The Clean Air Act was passed in 1963 and amended tons of times since then. But that's the main legislation on the federal level that regulates air quality. So, in the 1980s, when I was a kid, it was all about the ozone layer. There was a hole in the ozone layer and actually, the hole in the ozone layer is getting better. Here in the United States, we're not affected by it very much. A lot of countries actually still are affected by it. New Zealand and Australia seemed to be still under this hole in the ozone layer, and so the intensity of the sun is much greater in places like that. The EPA and the US still cares about ozone regulation, but it's moved on a lot more now to the regulation of greenhouse gases or carbon dioxide and things like that, emissions from automobiles, things like that. The EPA classifies air pollution into one of two categories. There are stationary sources. A stationary source of air pollution is something like a factory. It doesn't move around, but it belches some stuff into the air. There are mobile sources, which are usually cars, and trucks, and trains, and things like that. The EPA issues separate regulations for stationary sources and mobile sources that limit the amount of pollution they're allowed to emit that require them to scrub the pollution before it's admitted in the air to reduce toxicity and things like that. Now, penalties for violations of the Clean Air Act can actually be pretty severe. For businesses that violate this, usually, stationary sources are the main violators. We're looking at fines of up to \$25,000 a day. If the violation has willful, like you know the law and you're violating it anyway, you can face fines of up to a million dollars or even two years in prison if you're prosecuted criminally for a violation.

Water Pollution



Federal Water Pollution Control
Act, a.k.a. Clean Water Act

Drinking water regulation

Point sources

Thermal pollution

Penalties

Now, with respect to water pollution, if the Clean Air Act regulates air pollution, then logically, the Federal Water Pollution Control Act would regulate water pollution, right? Actually, we call it the Clean Water Act. It is called the name of the Federal Water Pollution Control Act, but we like to have it kind of the same as the Clean Air Act. So we have the Clean Water Act, even though that's not its actual name. It was enacted in 1948 and again, amended tens of times since then. It gives the EPA the power to regulate a bunch of different things with regards to water, drinking water. The EPA sets standards for the purity of drinking water throughout the country. It regulates what we call point sources of pollution. So this is, if you have a factory that produces water pollution that it dumps into like a retention pond or something like that, the EPA regulates that. That's a point source of water pollution. Also regulates thermal pollution. So you have a power plant. The way power plants work is, you heat up water and you boil it, and then the steam turns a turbine, creates electricity. But you're left with some hot water most of the time. What do you do with that? Thermal pollution is actually a big deal when it comes to our nation's waterways because it impacts the ecology. Can a fish live in hot water the way it lives in regular temperature water? I don't know. The EPA regulates all that kind of stuff. Again, as with the Clean Air Act, violations of the Clean Water Act are subject to similar penalties in terms of dollar amounts of fines and things like that. The EPA can also make you pay for cleanup costs if you unlawfully pollute a river, or a stream, or something like that. Actually, the prison term is longer under the Clean Water Act than it is in the Clean Air Act. You can spend up to 15 years in prison for willfully violating the Clean Water Act.

Land Pollution



Toxic Substances Control Act

Resource Conservation and
Recovery Act

Comprehensive Environmental
Response, Compensation, and
Liability Act (CERCLA)

Let's wrap up by talking about the way the EPA regulates land pollution. So, basically, any sort of pollution that isn't necessarily in the water or the air, we're talking about toxic substances. In 1976, Congress passed the Toxic Substances Control Act, and this is actually a law that the EPA has interpreted to basically allow them to create a list, a really long list, several hundred potentially harmful substances are on this list. If a substance is on the list, you're not allowed to use it for anything, unless you get permission sometimes. I mean, it's actually very complicated the way the list works, but in order to use a toxic substance, you have to get permission, you have to make disclosures, all this kind of stuff. Next, the Resource Conservation and Recovery Act of 1976, same year as the Toxic Substances Act. This requires any facility that produces, transports, stores, or disposes of hazardous waste to abide by certain regulations in terms of like how you control it, what type of containers you put it in, the way you go about disposing of it, all of these types of any kind of hazardous waste, so if you make it, transport it, store it, or disposed of it, basically, everybody in the chain of the production of any sort of hazardous waste, and EPA has a definition of what it considers hazardous waste, anybody in that chain has to abide by the rules the EPA has in place under the Resource Conservation Recovery Act. The final big law that the EPA enforces with regard to land pollution is this thing called CERCLA, the Comprehensive Environmental Response, Compensation, and Liability Act, also known as the Superfund. This was passed in 1980, and it actually creates a fund called the Superfund that companies pay into certain taxes on businesses. The fund is there to allow the EPA to clean up waste sites that have not been properly taken care of by the people who caused the mess. So, say I'm a company, and I have a big factory somewhere, and it creates all sorts of pollution, and it seeps into the ground and stuff like this, and then I go out of business, what happens? This is a very environmentally unfriendly piece of land now, and I'm bankrupt, and I don't have the money to pay for it. So the EPA actually has authority to come in and clean this up using money from the Superfund that

it has collected from taxes on businesses. Also, CERCLA gives the EPA authority to impose what we call joint and several liability for any party that had any part in making the mess. So, maybe I'm the factory owner, and I can't pay for it, but somebody else had some parts in delivering hazardous waste to the land, or hauling it away, or something like that, any party that was involved in creating the mess can actually be forced to pay for its cleanup. Why? Because as a policy in this country, we just care that stuff gets cleaned up, and we don't have land that's polluted forever. So if you had any part in causing the mess, we can make you pay for the entire costs of its cleanup.