**Chapter 7—Administrative Law and Government Regulation**

**A. Chapter Introduction**

In this chapter, students are introduced to what has often been called the fourth branch of government, administrative agencies. The federal government, through Congress and the executive branch, has created over 100 administrative agencies. State governments have also established numerous agencies. These agencies primary function is to adopt and enforce a myriad of rules and regulations regarding complex commercial and business operations. Attorneys and paralegals assist clientele in dealing with administrative agencies through assisting in licensure application procedures, appearing for administrative hearings, and appealing administrative orders. At the conclusion of this chapter the student will be able to:

* Compare and contrast general and specific governmental regulation.
* Define an administrative agency and describe their legislative, judicial, and executive powers.
* Explain the scope of the Administrative Procedure Act.
* Explain how administrative agency actions are subject to judicial review.
* Describe how the public is protected through FOIA, Government in Sunshine Act, Equal Access to Justice Act, and the Privacy Act.

**B. Instructional Ideas**

* Attend an administrative hearing.
* Review state and federal codes of regulations.
* Review newspapers for articles related to administrative actions.

**C. Lecture and Class Discussion Outline**

**Government Regulation**

**General Government Regulation**

Most government regulations apply to businesses and industries collectively. For example, OSHA regulates safety standards in the workplace, the CPSC regulates safety standards for products in the stream of commerce, etc.

**Specific Government Regulation**

Some government regulations apply to specific industries only. For example, the FCC regulates television and radio broadcast transmissions, the FAA regulates commercial airlines, etc.

**Administrative Agencies**

Administrative agencies are created by the federal and state legislative and executive branches.

**Rules and Regulations**

Administrative agencies are empowered to adopt their own rules and regulations that interpret and apply the laws they enforce.

**Administrative Procedure Act**

The APA is a federal act that establishes procedures to be followed by federal agencies in conducting their affairs. States have enacted their own procedural acts to govern state agencies.

**Delegation Doctrine**

When an administrative agency is created, it is delegated certain legislative, judicial, and executive powers. If an administrative agency acts outside the scope of its delegated powers, it is an unconstitutional act.

**Legislative Powers of Administrative Agencies**

**Substantive Rule Making**

Administrative agencies have the power to adopt substantive rules that have the force of law and must be adhered to by covered persons and businesses.

**Interpretive Rule Making**

Administrative agencies also have the power to adopt rules that interpret existing statutory language applicable to the administrative agency.

**Statement of Policy**

Announces a proposed course of action that an agency intends to follow in the future.

**Licensing Powers**

Administrative agencies are authorized to issue licenses before a person or business can enter certain types of industries.

**Executive Powers of Administrative Agencies**

**Administrative Subpoena**

An administrative subpoena is an order that directs the subject of the subpoena to disclose the requested information.

**Administrative Search**

An administrative search is an inspection of business premises to ensure administrative compliance. It is subject to the Fourth Amendment’s protection against unreasonable search and seizure.

**Judicial Powers of Administrative Agencies**

**Complaint**

The administrative agency is authorized to serve a complaint on a party it believes has violated the law. This party is called the respondent.

**Administrative Law Judge (ALJ)**

The ALJ is an employee of the administrative agency who presides over the administrative proceeding, decides questions of law and fact, and issues a decision in the form of an order.

**Judicial Review of Administrative Agency Actions**

**Petitioner—**The party appealing the decision of an administrative agency.

**Conditions for Judicial Review**

1. The case must be ripe for review.

2. The petitioner must have exhausted all administrative remedies.

3. The final-order rule requires that the decision of the administrative agency must be final before judicial review can be sought.

**Immunity—**Administrative agency employees are immune from lawsuits for personal liability regarding actions and decisions they make while performing their agency duties.

**Public Disclosure of Agency Actions**

**Freedom of Information Act (FOIA)**

FOIA is a federal law that gives the public access to most documents in the possession of federal administrative agencies. It also requires federal administrative agencies to publish agency procedures, rules, regulations, interpretations, and other information in the *Federal Register*.

**Government in the Sunshine Act**

This is a federal law that opens certain federal administrative agency meetings to the public.

**Equal Access to Justice Act**

This is a federal law that protects persons from harassment by federal administrative agencies and provides certain penalties for its violation.

**Privacy Act**

This federal law restricts information a federal administrative agency can maintain about an individual, and gives individuals the right to access agency records concerning them.

**Federal Food and Drug Administration (FDA)**

The FDA is a federal administrative agency empowered to interpret and enforce the Federal Food, Drug, and Cosmetic Act and other federal consumer protection laws.

**Federal Food, Drug, and Cosmetic Act (FDCA)**

FDCA is a federal statue that regulates the testing, manufacture, distribution, and sale of foods, food additives, drugs, cosmetics, and medicinal products.

**Powers of the FDA**

The FDA has the power to approve or deny applications by private companies to distribute drugs, food additives, and medicinal devices to the public.

**Regulation of Food, Drugs, and Cosmetics**

The FDA prohibits the shipment, distribution, or sale of *adulterated* or *misbranded* food, drugs, cosmetics, or medicinal devices.

**D. Internet Resources**

www.regulation.org

[www.abanet.org/adminlaw/home](http://www.abanet.org/adminlaw/home)

[www.fda.gov](http://www.fda.gov)

**E. Suggested Answers**

**Questions for Critical Legal Thinking and Writing**

1. Absent the right to appeal, administrative agencies would have unchecked authority to issue arbitrary and capricious rulings. As such, the appeal process helps ensure that administrative agencies do not exceed their constitutional authority.
2. Public hearings and disclosure of administrative actions as required by FOIA and Government in the Sunshine Act assist in protecting the public from arbitrary administrative actions.
3. FOIA assists the individual in dealing with administrative agencies by requiring the agency to provide information concerning the agencies’ rules, regulations, findings, and orders.
4. Yes, inasmuch as each regulate food production.

# Ethics Questions for Analysis and Discussion

1. For those administrative agencies that allow non-attorneys to represent individuals before administrative hearings, the same ethical obligations that apply to attorneys in representing clients apply equally to non-attorneys in such representation.
2. Yes.
3. Yes.

**Cases for Discussion**

1. Associate Justice Byron White, writing for the 6-3 majority, held that the FCC’s rules at issue are not within the FCC’s statutory authority. The Court reasoned that the FCC may not regulate cable systems as common carriers, just as it may not impose such obligations on television broadcasters. Authority to compel cable operators to provide common carriage of public-originated transmissions must come specifically from Congress.

# Associate Justice William O. Douglas, writing for a unanimous Court, held that the ICC’s conclusion that consumer benefits of new entry outweighed any adverse impact upon the existing carriers reflects the kind of judgment that is entrusted to it, namely, the power to weigh the competing interests and arrive at a balance that is deemed to be in the public convenience and necessity.

# The District Court held that: (1) evidence supported finding that company violated Act section by allowing food in its warehouse to become adulterated; (2) company’s president who was principally responsible for plant sanitation was properly assigned guilt for his company’s violations of the Act; and (3) president failed to present sufficient proof of impossibility defense to the charges.

1. Associate Justice Thurgood Marshall, writing for the 8-1 majority held that the warrantless inspections required by the Mine Safety and Health Act do not violate the Fourth Amendment but instead are reasonable within the meaning of that Amendment. The Court concluded that unlike searches of private homes, which generally require a warrant in order to be reasonable under the Fourth Amendment, warrantless administrative searches of commercial property do not necessarily violate that Amendment when the searches are necessary to further a regulatory scheme, and the federal regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes. Furthermore, in view of the substantial federal interest in improving the health and safety conditions in mines, Congress could reasonably determine that a system of warrantless inspections was necessary if the law is to be properly enforced and inspection made effective.

# Case for Briefing

1. Yes.
2. Code of Federal Regulations.
3. 40 C.F.R. Part 302, Table 302.4 (1990)
4. Comprehensive Environmental Response, Compensation and Liability Act of 1980 as enacted by Congress.

**F. Feedback**

Essay—Write an essay that is responsive to the following questions.

1. Identify five (5) federal administrative agencies and explain in detail each of their functions.
2. Identify five (5) state administrative agencies and explain in detail each of their functions.