Federal administrative law primarily concerns the **powers and procedures of Federal administering agencies** in relation to the public (but usually not in criminal matters). It is Congress that grants general and specific powers to various Federal agencies through **enabling legislation** as well the general laws for their fair and orderly administration. These executive powers are often **quasi-legislative in nature** (via rules and regulations applicable to a class of persons or organizations) or **quasi-judicial in nature** (via orders, adjudications and decisions involving particular persons or organizations). The given powers are also subject to **judicial review** and interpretation. As industry and technology grew over the past 125 years Congress deemed it appropriate to delegate the details of administering laws to protect the public or enhance fairness to executive departments or independent regulatory agencies. Unlike the heads of executive departments and agencies the heads of **independent regulatory agencies** generally do not serve at the pleasure of the President or have their rules and legislative recommendations reviewed by OMB (44 USC 3502(5) - [http://codes.lp.findlaw.com/uscode/44/35/I/3502](http://codes.lp.findlaw.com/uscode/44/35/I/3502) and OMB Cir. A-19). The first independent regulatory agency was the Interstate Commerce Commission established in 1887.

**Current Major Federal Government Regulatory Agencies** (per CQ Press *Fed. Regulatory Directory*)
- **Consumer Product Safety Commission** ([http://www.CPSC.gov](http://www.CPSC.gov))
  - (est. 1973; 3 commissioners, 7 yr. term; only 2 from same party)
- **Environmental Protection Agency** ([http://www.EPA.gov](http://www.EPA.gov))
  - (est. 1970; headed by an administrator who is a cabinet officer)
- **Equal Employment Opportunity Commission** ([http://www.EEOC.gov](http://www.EEOC.gov))
  - (est. 1965; 5 commissioners; 5 yr. terms, only 3 from same party)
- **Federal Communications Commission** ([http://www.FCC.gov](http://www.FCC.gov))
  - (est. 1934; 5 commissioners; 5 yr. terms, only 3 from same party)
- **Federal Deposit Insurance Corporation** ([http://www FDIC.gov](http://www FDIC.gov))
  - (est. 1933; 5 board of directors; 6 yr. terms, only 3 from same party; non-appropriated)
- **Federal Energy Regulatory Commission** ([http://www.FERC.gov](http://www.FERC.gov))
  - (est. 1977; 5 commissioners; 5 yr. terms)
  - (est. 1913; 7 governors, 14 yr. terms, non-appropriated)
- **Federal Trade Commission** ([http://www.FTC.gov](http://www.FTC.gov))
  - (est. 1914; 5 commissioners; 7 yr. terms; only 3 in same party)
- **Food and Drug Administration** ([http://www.FDA.gov](http://www.FDA.gov))
  - (est. 1906; headed by 1 commissioner; under HHS Dept.)
- **National Labor Relations Board** ([http://www.NLRB.gov](http://www.NLRB.gov))
  - (est. 1935; 1 Gen. Counsel - 4 yr. term & 5 other members - 5 yr. terms)
- **Occupational Safety and Health Administration** ([http://www.OSHA.gov](http://www.OSHA.gov))
  - (est. 1970; 1 Asst. Secretary; under Labor Dept.)
- **Securities and Exchange Commission** ([http://www.SEC.gov](http://www.SEC.gov))
  - (est. 1934; 5 commissioners; 5 yr. terms; only 3 from same party; non-appropriated)

**General Federal Agency Directories**
- U.S. Government Department and Agencies ([http://www.usa.gov/Agencies/Federal/All_Agencies/index.shtml](http://www.usa.gov/Agencies/Federal/All_Agencies/index.shtml))

*Federal Regulatory Directory* (annual) and *Federal Staff Directory* (quarterly or online) by CQ Press
*Federal Yellow Book* (quarterly or online) by Leadership Directories, Inc.
Major Federal Administrative and Rulemaking Laws

Provides that all agency rules be published in the daily Federal Register; 1937 amend – CFR
By rule since mid-1970’s preambles with explanation & comment summaries are required

(Also Judicial Review - 5 USC § 701 et seq., - http://codes.lp.findlaw.com/uscode/5/I/7); et. al.
Sets up rulemaking process, admin procedures, adjudication, hearings, etc. (required prop. rules)

Ensures public access, by request, to government records with various exempted info categories

Establishes fair agency practices for maintaining personally identifiable information

Requires open and announced government agency meetings with some exceptions

Requires reg. analysis of agency prop. rules (impact on small bsns); semi-annual reg. agenda

Requires agency rules/info collection activities be sent to OMB first & reduce paperwork burden

Requires agencies to submit agency rules to Congress for 30 day review & possible disapproval

Some Other Federal Administrative Laws

Permits private parties to sue U.S. in federal court for tort claims committed by gov. officials

Federal Advisory Committee Act, 1972 (http://www.archives.gov/federal-register/laws/fed-advisory-committee/)
Places limits on the governing & establishment of federal advisory committees

Provides payment by U.S. to prevailing parties of fees/costs in agency adjudications / courts

Allows agency heads to establish negotiated rulemaking committees to help formulate a rule

Limits Federal mandates on state & local governments without providing funding

Authorizes and encourages U.S. district courts to use ADR process and arbitrators

Types of Federal Agency Rules and Notices Published in the Federal Register (FR)

Rules and Regulations – Finalized agency rules – text placed in annual CFR with FR cites
Interim & Interim Final Rules – Temporary rules with request for comment (speed usually needed)
Direct Final Rules – Finalized agency rules with request for comments & possible rule withdrawal
Proposed Rules – Proposed rules published in FR with request for comments (30 – 90 days) (NPRM)
Advanced Notice of Proposed Rulemaking (ANPR) – Notice requesting comments for possible rule
Negotiated Rulemaking Documents – Notices regarding negotiated rulemaking committees
Petition for Rulemaking, Petition Findings – requests, usually from non-governmental bodies
Notices – Section published in FR for certain agency announcements on meetings, applications, grants,
decisions, authority delegations, information collection activities, policy statements, etc.
Presidential Documents – Proclamations, Orders, & Memos placed either before Rules or after Notices
Reader Aids and Other Material – Info on publisher, subscriptions, table of contents, CFR parts affected,
customer service, electronic research, CFR parts affected during current month, list of new laws

See next day’s Fed. Register items at https://www.federalregister.gov/public-inspection (increases throughout day)
Federal Rules, Non-Rules and Other Terminology
Delegated Authority – Congressionally delegated powers to agencies; agency delegations to staff/others
Legislative Rules – Finalized, binding rules authorized by Congress with notice/comment process
Procedural Rules – Non-substantive rules that need not go through notice/comment process
Retroactive Rules – Finalized or adjudicative rules having retroactive effect permitted by law/courts
Interpretive Rules – Non-binding agency interpretations/opinions of statutes; may persuade courts
Informal Rules – Non-binding, non-enforceable agency guidances, policy statements, letters (FR notice)
Adjudications – Disposition of individual claims by gov. officials after administrative due process
Administrative Law Judge – presides at admin. hearings, takes testimony, makes determinations of fact..
Judicial Review – Court review of agency rules/decisions for authority, due process, standing, etc.

Researching Federal Regulations on the Internet (Free & Commercial)
Federal Register on GPO’s FDsys (http://www.gpo.gov/fdsys/; 1994+; PDF authenticated version)
RegInfo.gov (http://www.reginfo.gov/) tracks pending regs for OMB review (indep. agencies exempt)
Reg Map (http://www.reginfo.gov/public/reginfo/Regmap/index.jsp) – shows the regulatory review process
OpenRegs.com (http://OpenRegs.com) tracks regs, RSS alerts to recent, closing, significant prop. regs
Justia’s Regulation Tracker (http://regulations.justia.com/) searches from 2005; RSS feeds; can browse
LLRX article by Peggy Garvin on reg trackers (http://www.llrx.com/columns/govdomain45.htm)
Other Commercial Services – Bloomberg, LoisLaw, LawProbe, RegScan, etc.

Researching Federal Agency Orders, Decisions, Interpretations, Letters, etc. on Internet
Admin. Decisions & Other Actions by Agency (http://www2.lib.Virginia.edu/govtinfo/fd_decisions_agency.html)
Federal Administrative Decisions and Resources (http://libraryguides.law.Pace.edu/administrative)
Federal Agency Web Sites (dig deep) & perhaps create Custom Google searches of various sites like …
Federal Administrative Materials on Lexis (http://www.Lexis.com) by agency, file, or subject
Federal Administrative Materials on Westlaw (http://www.Westlaw.com) by agency, file, or subject
Other Commercial websites/publications like CCH and LRP’s Equal Employment Reporter, etc.

Some Administrative Law Treatises
Administrative Law by Stein, Mitchell & Mezines, LexisNexis, six volume loose-leaf
Administrative Law and Practice by C. H. Koch, West, 1997, pocket part updates
Administrative Law and Regulatory Policy by Breyer, et. al., 5th Ed., 2003
Administrative Law, Third Series – Pike and Fischer – multiple volume loose-leaf
Administrative Law Treatise – by Richard J. Pierce, Aspen Law, 3 volumes
Federal Administrative Law (American Casebook Series) by Gary Lawson, 2006 (Textbook)
Selected Supreme Court Opinions on Federal Administrative Law

Held that delegation of legislative power to federal agencies is not unconstitutional so long as the agency in its exercise conforms to an “intelligible principle” of action authorized by Congress

Invalidated a provision of executive regulation as Congress laid down no intelligible principle for the delegation of that power (order had also been inadvertently repealed and reinstated)

Held that an agency’s interpretations and rules are to be given deference according to the agency’s thoroughness of investigation, valid reasoning, consistency, and other persuasiveness

Held that agency discretionary action is subject judicial review to determine if action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law

Held that if the statute is unclear then deference goes to a permissible construction by the agency

– Held that an agency’s interpretation of an ambiguous statute was a permissible construction (variable annuities are not insurance & are incidental to banking)

Held that agency opinion letters, interpretations, guidelines, policy statements, and manuals lack the force of law and do not require deference but are to be respected if persuasive per Skidmore

Held that Chevron deference of agency lawmaking does not necessarily apply to agency decisions that have not gone through notice-and-comment rulemaking or formal adjudication

Held that Chevron deference may be applicable to a reasonable agency interpretation of an ambiguous statute with interstitial legal questions

Held that deference is due agency interpretations of ambiguous agency rules

Held that agencies may revise interpretations of own regs w/o notice-and-comment procedures

Selected Web Sites on Federal Administrative Law
ABA Administrative Procedure Database Archive (http://www.law.FSU.edu/library/admin/)
ABA’s Section of Federal Administrative Law & Practice (http://www.ABAnet.org/adminlaw/)
Administrative Law – HG.org (http://www.hg.org/adm.html; also has state administrative code links)
Administrative Law Course Outlines – Internet Legal Res. Group (http://www.ilrg.com/students/outline/)
Administrative Law Practice Area – Findlaw (http://www.findlaw.com/01topics/00administrative/index.html)
Administrative Law Prof Blog (http://lawprofessors.typepad.com/adminlaw/)
Administrative Law Research Tutorial – Georgetown (http://www.ll.georgetown.edu/tutorials/admin/index.cfm)
Administrative Law Review – American Univ. (http://www.wcl.american.edu/journal/alr/back.cfm)
Federal Administrative Law Judges Conference (http://www.FALJC.org/)
National Association of Administrative Law Judiciary (http://www.NAALJ.org)