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## Administrative Law and Administrative Agencies

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### ARTICLE ONE

*All Legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives . . .*

*The Congress shall have power to lay and collect taxes . . . provide for the common defense and general welfare of the United States . . . regulate commerce . . . **make rules for the government . . . make all laws** which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any Department or Officer thereof.*

— **United States Constitution**

### CHAPTER OBJECTIVES

Administrative law defines the legal powers of government agencies. Questions answered in this chapter include:

- What is administrative law?
- What is an administrative (government) agency?
- What are the major areas of administrative law?
- What are substantive and procedural laws?
- Why do legislatures create administrative agencies?
- What is an enabling act/statute?
- What are the powers of agencies?

## CHAPTER OVERVIEW

Congress may pass a new statute creating agencies (sometimes called departments or commissions) to solve problems. For example, to solve widespread environmental pollution, Congress passed a law in 1970 creating the United States Environmental Protection Agency (EPA). Prior to the creation of the EPA, environmental problems were handled by five different federal agencies. As part of the law creating the EPA, the Department of Agriculture's registration of pesticides and the Department of Interior's water pollution control programs became functions of the EPA. Modern agencies are often formed by transferring some of the powers in the statutes of established agencies to the new agency. The authority to register pesticides was contained in the statute creating the Department of Agriculture and transferred to the EPA through a reorganization plan within the law of 1970, which created the EPA.

A new agency, such as the EPA, then follows the established laws in its area of expertise (environmental protection for EPA) and develops new standards and makes new rules and regulations. Agencies on state and local levels operate in similar fashion; the state legislature passes a law creating the agency and the agency upholds laws in its area of expertise and makes rules and regulations to implement the laws. The laws creating agencies and the laws upheld by agencies are referred to as administrative laws; the government agencies as administrative agencies. Administrative law and administrative agencies are important in the daily operation of federal, state, and local governments for matters ranging from national defense to changing electric utility rates to licensing drivers.

### A. Explanation of Administrative Law

The laws that define the legal powers of government agencies and the limits of these powers are collectively called **administrative law**. The administrative law sets out the means agencies may pursue to apply these powers and the remedies people may seek if injured by an action or decision of an agency using these powers.

#### 1. Acts and Statutes

The administrative authority is derived from the **enabling act** (also called **statute** or **law**), which creates the agency. The enabling act defines the agency's role or mission. The Department of Agriculture was created

by an enabling act passed by Congress cited as 7 USC §2201, which is presented in the following example.

### Example 1.1

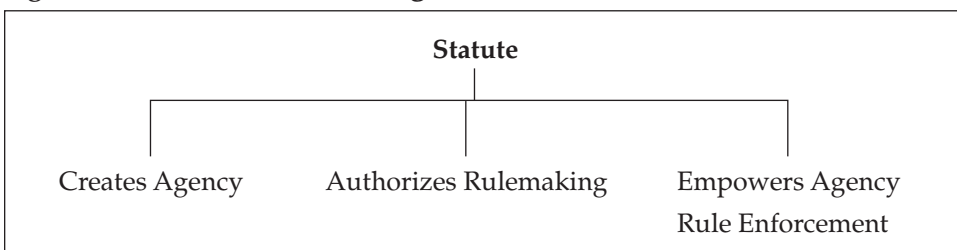
#### *7 USC §2201: Establishment of Department*

There shall be at the seat of government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, rural development, aquaculture, and human nutrition in the most general and comprehensive sense of these terms and to procure, propagate, and distribute among the people new and valuable seeds and plants.

The **statute** creates the agency; it is an administrative law. Accountability of agency action is a major facet of the statute. In a sense, administrative law equalizes the vast power of the government and the lesser powers of individuals and organizations working with government agencies; agencies are bound by rules, just as citizens are bound by the rules that agencies make. Any action an agency takes that is not mandated by the powers in the statute may be appealed. The Department of Agriculture cannot make rules upholding education laws, nuclear energy laws, or laws relating to other areas of government; it only may make rules upholding any law on agriculture that is stated in its enabling act or amendments. Legislatures pass this authority to agencies because legislatures do not have the time and resources to make all the laws necessary to implement the general laws that legislatures enact. The federal government has one administrative law system and each state has its own administrative law system. Therefore, there are federal agencies and state and local agencies.

Figure 1.1 illustrates the powers of the enabling statute that creates the agency.

**Figure 1.1 Powers of Enabling Statute (Act/Law)**



## 2. Substantive Laws and Procedural Laws

In addition to creating specific agencies, administrative laws guide all agencies in their treatment of individuals. Some of the laws concentrate on personal protections while others stress proper procedures to be followed in any agency action. The administrative laws that protect rights and liberties are considered **substantive law**; the administrative laws that define the legal procedures and methods to be followed are considered **procedural law**.

The notable procedural law is the **Federal Administrative Procedure Act**. This statute standardizes the procedures of the various federal administrative agencies. In stating standards for the making of rules by agencies, the Act says: "the agency shall give interested persons an opportunity to participate. . . ." (5 USC §553(c))

Example 1.2 illustrates substantive and procedural laws.

### Example 1.2

#### *Substantive Law*

The United States Constitution states the basic rights of citizens. ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law;" (Amendment XIV) Agencies must extend the protections of law or their decisions will not be enforceable.

#### *Procedural Law*

The Federal Administrative Procedure Act states the standards for the making of rules (regulations): "General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law." (5 USC §553b) Agencies must notify individuals of impending rules and regulations, if notification is not given, the rule will not have the effect of a law because the legislature limited the power of the agency by requiring notification.

## 3. The Range of Administrative Laws

Administrative laws include: the enabling acts (statute/laws), the procedural laws, the substantive laws, and the laws within an agency's field of expertise. Figure 1.2 illustrates these areas of administrative laws as they relate to the EPA.

Figure 1.2 Areas of Administrative Law

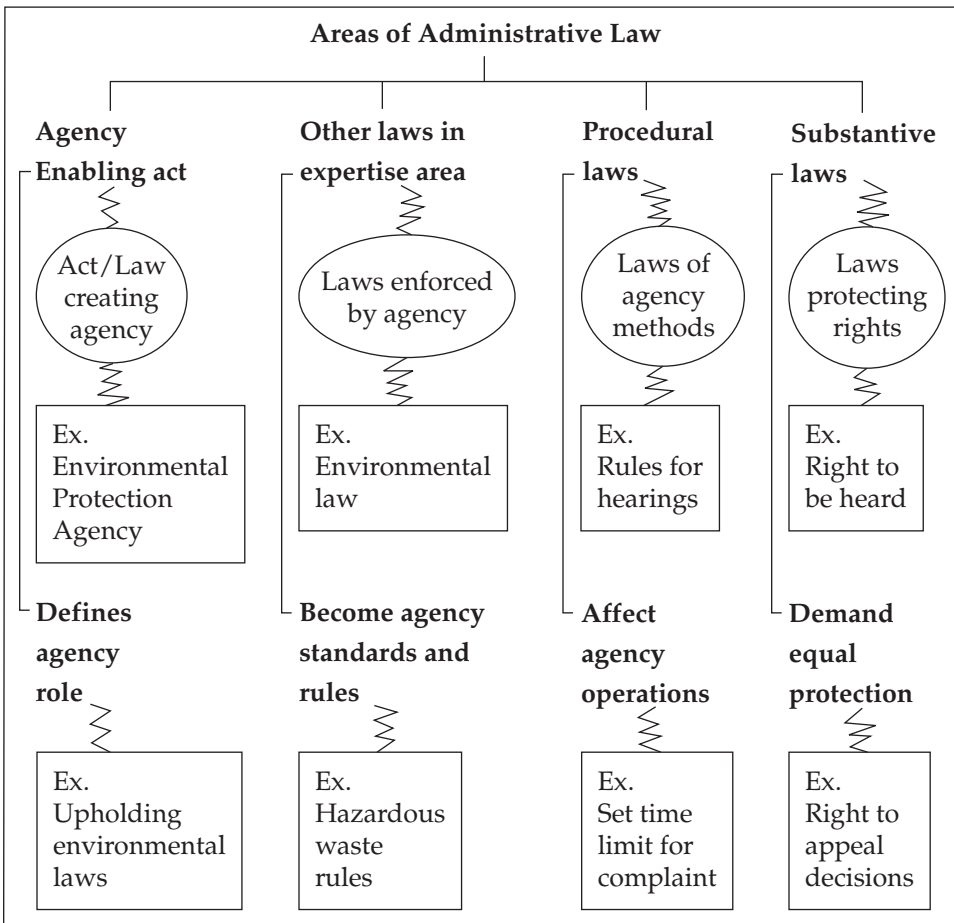
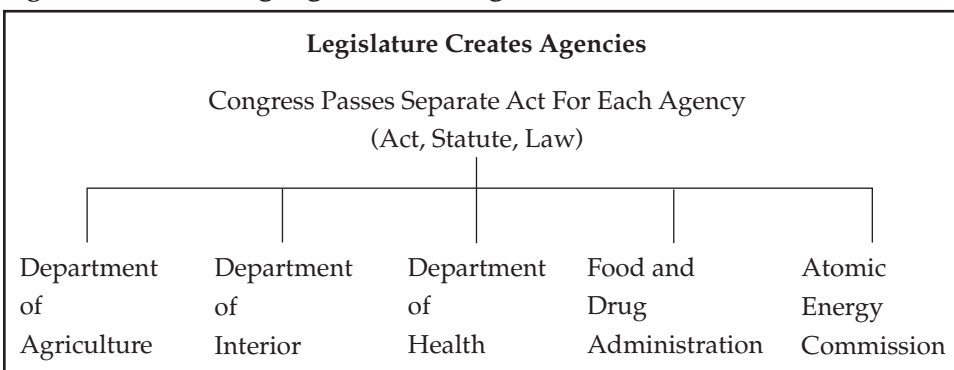


Figure 1.3 Creating Agencies through a Statute





## PARALEGAL PRACTICE EXAMPLE

You are a paralegal working for an attorney who asks you to look up the proper cites for his draft of a client's complaint to the state environmental agency. As you read through the draft, you see both state and federal laws and regulations mentioned; you know your firm keeps the state laws and regulations in its library/conference room. You schedule in time to visit the nearby county law library, which has updates on federal and state laws and regulations.

## B. Explanation of Administrative Agency

Originally, **administrative agencies** were created to solve problems of public interest quickly and inexpensively. An administrative agency is a government body or organization created by legislatures to serve citizens by overseeing and administering laws in designated areas of expertise; the legislature begins the enactment or creation of an agency. Welfare services, police departments, national defense agencies, and health commissions are examples of administrative agencies.

Figure 1.3 depicts creating agencies by statute.

Today's modern agencies are often created by combining similar functions from many agencies into one agency. EPA's environmental functions were consolidated from five agencies and departments. Some of the



The EPA is a well-known government agency — can you think of others?