

Chapter 6
Administrative Agencies and the Regulation of Business

1 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Areas of Regulation

- Administrative agencies handle two areas of public concern:
 - Economic regulation
 - Public welfare agency regulation

2 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Economic Regulation

- Three areas
 - Administrative approvals for certain types of businesses or equipment
 - Regulate securities and financial businesses
 - Completely regulate some industries

3 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Public Welfare

- Protects the public
 - Health
 - Safety
- Protection
- Entitlement programs

4 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Features of Administrative Agencies

- Regulate only specified subject matter areas
- Well defined hierarchy
- More flexibility than legislative bodies

5 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Nature of Administrative Agencies

- Primary interpreters and enforcers of congressional statutes
- Created by enabling legislation
- Four types of agencies:
 - Line
 - Independent
 - Government
 - Quasi-official

6 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Nature of Administrative Agencies

- Congress controls agencies four ways:
 - Creates and defines agency's powers
 - Confirms appointments of the heads of the agencies
 - Controls the agency budget
 - May reorganize or abolish the agency

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Administrative Procedure Act

- Rule making
- Information gathering
- Adjudication
- Constitutional safeguards

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Powers of Administrative Agencies

- Quasi-legislative function
- Judicial function
- Executive function

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Quasi-Legislative Function

- Rule making
- Ministerial powers
- Misinformation

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Discretionary Rule-Making Powers

- Procedural
- Interpretive
- Substantive
- Informal rule making
- Formal rule making
- Federal Register and Code of Federal Regulations

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Judicial Function

- Adjudication
- Administrative law judges
- Doctrine of exhaustion of remedies

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Executive Function

- Acquisition of information
 - Record keeping
 - Subpoena power
 - Power to conduct physical inspections
- Record keeping requirements
- Investigatory powers
- Enforcement powers

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Limitations on Administrative Agencies

- Constitutional limitations
- Congressional limitations
- Congressional statutes
- Judicial review

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Constitutional Limitations

- Substantive
- Procedural
- Fourth Amendment
- Fifth Amendment
- Liability

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Congressional Statutes

- FOIA
- Privacy Act
- Equal Access to Justice Act
- Sunshine Act
- Regulatory Flexibility Act
- Sunset Laws

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Marshall v. Barlow's, Inc.

Landmark Case

- US Supreme Court articulated a different standard than that used for criminal law when seeking a search warrant
- Explains why a different warrant-procurement process should be applied for criminal law and administrative agency searches

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Deregulation

- Limitation on regulatory power
- Minimize duplicitous conflicting regulations
- Enhances public and congressional understanding of regulatory objectives

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

International Considerations

- Use of administrative law in assisting in international transactions

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Summary

- Areas of Regulation
- Features of Administrative Agencies
- Nature of Administrative Agencies
- Administrative Procedure Act
- Powers of Administrative Agencies
- Limitations on Administrative Agencies
- Marshall v. Barlow's, Inc.
- Deregulation
- International Considerations

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