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To submit a summary or a set of notes for a class, email sba@lclark.edu Related Content Professor Funk is the author of American Constitutional Structure and co-author of one of the leading case law of the Administrative Judge, Administrative Procedure and Practice: Problems and Cases, as well as Administrative Law: Examples & Explanation and Federal Administrative Regulations. Professor Funk, together with Professor Craig Johnston, is also co-author of Legal Protection of the Environment, a case law of environmental law. In 2004-2005, Funk was a senior Fulbright Scholar at the University of Heidelberg, where he taught both U.S. constitutional law and environmental law. Funk has published numerous articles on administrative and environmental issues, including in such publications as the Duke's Journal of Law, the Harvard Journal on Legislation, the Yale Journal on Regulation, the Review of the Administrative Law, and the U.C.L.A. Review of Environmental Law and Policy. He is chairman of both the Administrative Law Departments and the Law on Natural american association of law schools. Funk is also active in the American Bar Association, where he recently served on the ABA's ABA's Task Force on Preemption of State Tort Law and where he is a fellow of the Department of Administrative Law and Regulation, which he previously chaired and on whose Council he served. Professor Funk is also a Center for Progressive Reform Scholar, a member of the American Law Institute, and a fellow of the American Bar Foundation. He has been admitted to practice in New York, the District of Columbia, and before the U.S. Supreme Court. Before coming to law school to teach, Professor Funk was assistant general counsel at the U.S. Department of Energy and earned a special citation for exceptional accomplishments from the Secretary of Energy. Prior to that, Funk was chief executive of the Legislative Subcommittee of the U.S. House of Representatives' Permanent Select Committee on Intelligence, where he played an important role in drafting the Foreign Intelligence Surveillance Act. Before joining the House Committee, Funk was a staff attorney in the U.S. Department of Justice's Office of Legal Counsel, where he received a special award for outstanding service. Immediately after law school, he clerked before Judge James Oakes of the U.S. Court of Appeals, Second Circuit. Separately published works published as part of a collection part of LLSDC's Legislative Source Book by Richard J. McKinney, retired federal law librarian; also available in the PDF A short statement of the Federal Administrative Law Federal administrative law concerns mainly the powers and procedures of Federal managing 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 by enabling legislation, as well as general laws for their fair and orderly administration. These executive powers are often quasi-legislative (through rules and regulations applicable to a class of persons or organisations) or quasi-judicial in nature (through orders, court proceedings and decisions involving certain persons or organisations). The powers given are also subject to judicial review and interpretation. As industry and technology grew over the past 125 years Congress felt it appropriate to delegate the details of administering laws to protect the public or improve 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 the president's pleasure or let their rules and legislative recommendations pass through Office of Management and Budget (OMB) revised [see 44 U.S.C. 3502(5), 12 U.S.C. 250, E.O. 12866 Sec. 3(b) and OMB Cirb. A-19]. The first independent regulatory body was the Interstate Commerce Commission established in 1887 (the ICC was abolished in 1995; see the agency's history changes at the end of the annual U.S. Manual). Current Major Federal Government Regulatory Agencies (as selected in the Federal Regulatory Review by CQ Press/Sage, 2014) Product Safety Commission (CPSC.gov) (est. 1973; 3 Commissioners; 7 yrs. term; only 2 of the same party) Environmental Protection Agency (EPA.gov) (est. 1970; headed by an administrator who is cabinet official) Equal Employment Commission (EEOC.gov) (est. 1965; 5 commissioners; 5 yrs. terms, only 3 of the same party) Federal Communications Commission (FCC.gov) (est. 1934; 5 Commissioners; 5 yrs. terms, only 3 of the same party) Federal Deposit Insurance Corporation (FDIC.gov) (est. 1933; 5 board of directors; 6 yrs. terms, only 3 of the same party; unstenated) Federal Energy Regulatory Commission (FERC.gov) (est. 1977; 5 commissioners; 5 yrs. terms) Federal Reserve System, Board of Governors of the (FederalReserve.gov) (est. 1913; 7 governors , 14 yrs. terms, unstenated) Federal Trade Commission (FTC.gov) (est. 1914; 5 commissioners; 7 yrs. terms; only 3 in the same party) Food and Drug Administration (FDA.gov) (est. 1906; headed by 1 Commissioner; under HHS Dept.) National Labor Relations Board (NLRB.gov) (est. 1935; 1 Gen. Counsel - 4 yrs. term & 5 other members - 5 yrs. terms) Occupational Safety and Health Administration (OSHA.gov) (est. 1970; 1 Asst. Secretary; under Labourdept.) Securities and Exchange Commission (SEC.gov) (est. 1934; 5 commissioners; 5 years; only 3 from the same party; unstenated) General Federal Agency Directories A-Z Index of the U.S. Department of Government and Agencies on USA.gov List of Federal Agencies in the United States (Wikipedia entry) United States Government Manual on GovInfo (annually or biennially from 1997) Federal Regulatory Directory (book with updated editions by CQ Press /Sage) Federal Yellow Book subscription (quarterly or online) by Leadership Connect) Major Federal Administrative and Rulemaking Laws Federal Register Federal Register, 1935 (44 USC § 1501 et seq.). Stipulates that all rules of the agency are published in the daily Federal Register; 1937 amdt established CFR. Per line since the mid-1970s preambles with explanation & commentary summaries are required. Administrative Procedure Act, 1946 (5 USC § 551 et seq.) & 5 USC § 701 et seq. - Judicial review, et. al.). Sets a rules process, admin procedures, trial, hearings, etc. Freedom of Information Act, 1966 (5 USC § 552). Ensures that the public can access government data on request with different exempt information categories. Privacy Act of 1974 (5 USC § 552a). Establish fair desk practices for tracking personally identifiable information. Government in Sunshine Act, 1976 (5 USC § 552b). Requires open and announced meetings of government agencies with some exceptions. Regulatory Flexibility Act, 1980 (5 USC § 601 et seq.). Requires a regulatory analysis of the agency's proposed rules (impact on company); half-yearly reg. Calendar. See also notes to § 601 for related laws and executive orders. Paperwork Reduction Act of 1980 / 1995 (44 USC § 3501 et seq.). Required agency rules/info collection activities to be sent to OMB first & 601 et seq.; reduce paperwork burden. Congressional Review Act, 1996 (5 USC § 801 et seq.). Requires agencies to submit office rules to Congress for 30 days review & 601 et seq.; possible disapproval. Some other Federal Administrative Laws Federal Act of Tort Claims, 1946 (28 USC § 2671 et seq.). Permits private parties to sue the U.S. in federal court for tort claims committed by gov. Officials. Federal Advisory Committee Act, 1972 (5 USC App.). Sets limits on the governing & 601 et seq.; establishment of federal advisory committees Equal Access to Justice Act, 1980 (5 USC § 504), et al. Provides payment by the U.S. to the ruling parties of fees/fees in agency court cases/courts. Negotiated Law on the Rules of 1990 (5 USC § 561 et seq.). This allows the heads of the agency to set up negotiated rules committees to help formulate a rule. Unfunded Mandates Reform Act of 1995 (2 USC 1501 et seq.). Borders Federal mandates on state & 601 et seq.; local governments without funding. Alternative Dispute Resolution Act of 1998 (28 USC 651 et seq.). Authorizes and encourages U.S. District Courts to use ADJ trial and arbitrators. Types of Federal Agency Rules & 601 et seq.; Notices Published in the Federal Register Rules and Regulations – Finalized agency rules – text placed in annual CFR with FR cites – - Interim & 601 et seq.; Interim Final Rules – Temporary rules with request for comment (speed usually needed) – - Direct Final Rules – Finalized agency rules with request for comments & 601 et seq.; 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, & 601 et seq.; Memos posted for rules or after notices Reader Aids and Other Material – Info about publisher, subscriptions, table of contents, affected CFR components, customer service, electronic research, CFR components affected during the current month, list of new laws See also Federal Register Document Drafting Handbook. And see the the next day. Register items on the public inspection site (increase items throughout the day). Federal rules, non-rules and other terminology delegated Authority – Congress delegated powers to agencies, delegations of the Agency to staffer/other staffers Rules – Completed, binding rules allowed by Congress with notice/comment process Procedure Procedural Rules - Non-substantive rules that do not have to go through notification/comment process Retroactive Rules - Completed or tried rules retroactively permitted by law/judge Interpretive Rules - Non-binding agency interpretations/opinions of the statutes Can Convince Courts Informal Rules - Non-Binding, Unenforceable Agency Guidelines, Policy Statements, Letters (FR Notice) Preamble to Rules - Mandatory Info With Rules - Agency, Action, Summary, Data, Addresses, Supp. Info Orders, Decisions – Binding Rulings by Agency Officials on Individuals/Companies Adjudications – Disposition of Individual Claims by Gov. officials after administrative due process Administrative Law Judge – chairman of admin hearings, takes testimonies, makes determinations of facts. Judicial review – Judicial review of the agency's rules/decisions for authority, due process, standing, etc. See related CRS report. See also: Counting Regulation: An Overview of Rulemaking, Types of Federal Regulations, and Pages in the Federal Register, by Maeve P. Carey, Congressional Research Service report #R43056. Research on Federal Regulations on the Internet [Free & 601 et seq.; Commercial] Federal Register on GovInfo (from 1936 - browse, search, pick up by cite from 1995. pdf verified docs) FederalRegister.gov (from 1994 - browse by agency, pre-search, links to GovInfo docs) Federal Register (1936-93) & 601 et seq.; CFR (1938-95) via Library of Congress/HeinOnline (browse/print/download) Code of Federal Regulations on GovInfo (annually from 1997: browse, search, cite search - pdf) eCFR.gov (current CFR - browse, search, link - no PDF documents, not official or verified) List of CFR sections Affected on GovInfo (indicates changes to CFR sections by proposed & 601 et seq.; final rules) OpenRegs.com (mobile regulatory tracking app (recent & 601 et seq.; proposed) created at George Mason U. 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Reg. from 1936) (CFR from 1984) (text & 601 et seq.; pdf) Other commercial services – BloombergLaw, LoisLaw, RegScan, etc. Research on orders from the Federal Agency, Decisions, Interpretations, Letters, etc. A-Z Index of Federal agency websites (dig deep) & 601 et seq.; perhaps create custom Google search Federal Administrative Decisions and Resources site at Pace University Law Library Federal agency decisions & 601 et seq.; orders site at ASU Sandra Day O'Connor College of Law Federal Administrative Decisions & 601 et seq.; Guidance on Westlaw.com Federal Administrative Materials on LexisAdvance.com U.S. Federal Agency Documents, Decisions, and Appeals Library on HeinOnline Other commercial websites and publications like BloombergLaw, LoisLaw, LRP Publications, etc. Selected Administrative Law Treatises Administrative Law by Stein, Mitchell & 601 et seq.; Mezinnes, LexisNexis (six volume loose-leaf) Administrative Law and Practice by C. H. Koch, Thomson Reuters, 2010 with pocket part updates Law Administrative and Process in a Nutshell, 5th ed. by Gellhorn & 601 et seq.; Levin, Thomson Reuters, 2006 Administrative Law and Regulatory Policy by Breyer, et. al., 6th Ed., 2006 Administrative Law, Third Series - Bloomberg BNA (multiple volume monthly loose-leaf service) Administrative Act Treatise by Richard J. Pierce, Aspen/Wolters Kluwer, 5th Ed. (3 vol. loose-leaf) Federal Administrative Procedure Sourcebook, 5th ed. by Funk & 601 et seq.; Lubbers, American Bar Assn., 2016 A Guide to Federal Agency Rulemaking by Jeffrey Lubbers, American Univ., 5d ed. 2012 Selected Supreme Court Opinions on Federal Administrative Law J.W. Hampton Jr. & 601 et seq.; Co. v. United States [276 U.S. 394 (1928)]. Held that the delegation of legislative power to federal agencies is not unconstitutional, as long as the agency in its exercise is consistent with an understandable principle of action authorized by Congress. Panama Refining Co. v Ryan [293 U.S. 388 (1935)]. Invalidate a provision of executive regulations as Congress does not define an understandable principle for the delegation of that power (order was also inadvertently revoked and reinstated). Skidmore v. Swift & 601 et seq.; Co. [323 U.S. 134 (1944)]. Held that the interpretations and rules of an agency should be given respect on the basis of the thoroughness of the investigation, the valid reasoning, the consistency and the other persuasion of the agency. Citizens to Preserve Overton Park v. Volpe [401 U.S. 402 (1971)]. Held that the agency's discretionary action is subject to judicial review to determine whether the action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc. [467 U.S. 837 (1984)] Hero that if the statute is unclear, deference goes to a permissible construction by the agency. See CRS report, Chevron Deference: A Primer. NationsBank of N.C., N.A. v. Variable Annuity Life Insurance Co. [513 U.S. 251 (1995)]. Held that an agency's interpretation of an ambiguous statute was a permissible structure (variable annuities are not for incidental for the banking system). Christensen et al. v. Harris County et al. [529 U.S. 576 (2000)]. Held that agency advisory letters, interpretations, guidelines, guidelines, statements, and manuals lack the power of the law and require no reverence, but must be respected as convincing per Skidmore. United States v. Mead Corp. [533 U.S. 218 (2001)]. Held that Chevron's respect for the agency's laws does not necessarily apply to agency decisions that have not gone through notice-and-comment regulations or formal ruling. Barnhart v. Walton [535 U.S. 212 (2002)]. Held that Chevron respect may apply to a reasonable agency interpretation of an ambiguous statute with interstitial legal questions. Talk America, Inc. v. Michigan Bell [June 9, 2011]. Judged that respect is the proper agency interpretations of ambiguous agency rules. Perez v Mortgage Bankers Ass'n [March 9, 2015]. Considered that agencies can review interpretations of their own regs without procedures for notification and comments. Encino Motorcars v Navarro [Jun. 20, 2016]. Considered that Chevron respect does not apply when a regulation is procedurally defective or has insufficient explanation for deviation from the policies of the past and therefore suggests that it is arbitrary and capricious. Lucia v. SEC [June 21, 2018] – Ruled that administrative judges are inferior officers of the United States and therefore must be duly appointed by President, U.S. District Court or Federal Agency Head. Selected websites on ABA's Federal Administrative Law Section of Administrative Law & 601 et seq.; Regulatory Practice at AmericanBar.org Administrative Law at HG.org Legal Resources; also has the state administrative code links Administrative Law: Home at FSU College of Law Research Center Administrative Law Course Outlines at Internet Legal Resources Group (ilrg.com) Administrative Law Research site at Harvard Law School Library Administrative Law Research Tutorial site at Georgetown Law Library Administrative Law Review (back issues of American University) Federal Administrative Law site at Duke University Goodson Law Library Federal Administrative Law - George Mason U. 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