

Administrative Law Chapter 3

Chapter 3

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Chapter 3

Agency Enforcement of Regulations

CHAPTER OBJECTIVES
After reading this chapter, you should be able to:

- Demonstrate an understanding of how agencies enforce their regulations.
- Compare and contrast an agency's enforcement of its regulations with the criminal law.
- Examine the enforcement power of agencies within the scope of the Fourth Amendment.
- Examine the enforcement power of agencies within the scope of the Fifth Amendment.

CHAPTER OUTLINE
Introduction to Rules and Rulemaking
Informal Rulemaking

Step Text

Agency Enforcement of Regulations

CHAPTER OBJECTIVES

After reading this chapter, you should be able to:

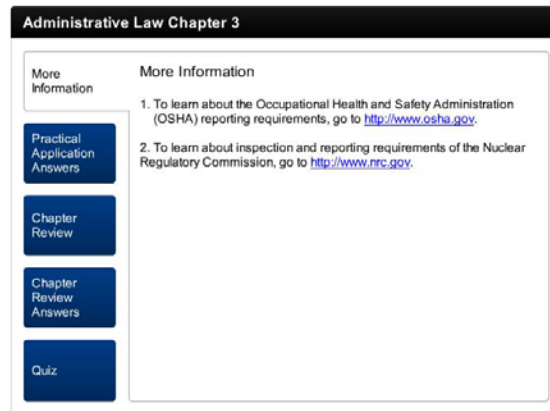
- Demonstrate an understanding of how agencies enforce their regulations.
- Compare and contrast an agency's enforcement of its regulations with the criminal law.
- Examine the enforcement power of agencies within the scope of the Fourth Amendment.
- Examine the enforcement power of agencies within the scope of the Fifth Amendment.

CHAPTER OUTLINE

Introduction to Rules and Rulemaking
Informal Rulemaking
Formal Rulemaking
Hybrid Rulemaking
Exempted Rulemaking
Negotiated Rulemaking
Rulemaking in Perspective

More Information

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The screenshot shows a software interface for 'Administrative Law Chapter 3'. On the left is a vertical sidebar with four blue buttons: 'Practical Application Answers', 'Chapter Review', 'Chapter Review Answers', and 'Quiz'. The main content area is titled 'More Information' and contains two numbered items:

1. To learn about the Occupational Health and Safety Administration (OSHA) reporting requirements, go to <http://www.osha.gov>.
2. To learn about inspection and reporting requirements of the Nuclear Regulatory Commission, go to <http://www.nrc.gov>.

Step Text

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Practical Application Answers

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The screenshot shows a software interface with a dark header bar containing the text "Administrative Law Chapter 3". On the left side, there is a vertical navigation menu with five blue buttons: "More Information", "Practical Application Answers", "Chapter Review", "Chapter Review Answers", and "Quiz". The main content area on the right is titled "Practical Application Answers" and contains the following text:

1. Go to the Web site of the Mine Safety and Health Administration at <http://www.msha.gov> and answer the following:

A. What statute created the Mine Safety and Health Administration?
Federal Mine and Safety Act of 1977

B. How many coal miner fatalities occurred in 2005?
23

2. Review Exhibit 3-1 and answer the following:

A. What kinds of business entities does the FTC have the power to investigate?
Any person, partnership, or corporation engaged in or whose business affects interstate commerce.

B. What kinds of business entities are exempted from the FTC's power to investigate?

Step Text

1. Go to the Web site of the Mine Safety and Health Administration at <http://www.msha.gov> and answer the following:

A. What statute created the Mine Safety and Health Administration?
Federal Mine and Safety Act of 1977

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2. Review Exhibit 3-1 and answer the following:

A. What kinds of business entities does the FTC have the power to investigate?
Any person, partnership, or corporation engaged in or whose business affects interstate commerce.

B. What kinds of business entities are exempted from the FTC's power to investigate?
Banks, savings and loans, federal credit unions, and common carriers.

C. What can the FTC do if a person does not comply with a subpoena?
The FTC can seek enforcement of the subpoena in district court.

3. Review Exhibit 3-2 and answer the following:

A. What steps can the EEOC take when investigating a charge of discrimination?
The EEOC may make written requests for information, interview people, review documents, and visit the facility where the alleged discrimination took place.

B. What happens if the EEOC decides not to sue and not bring a case into federal court?

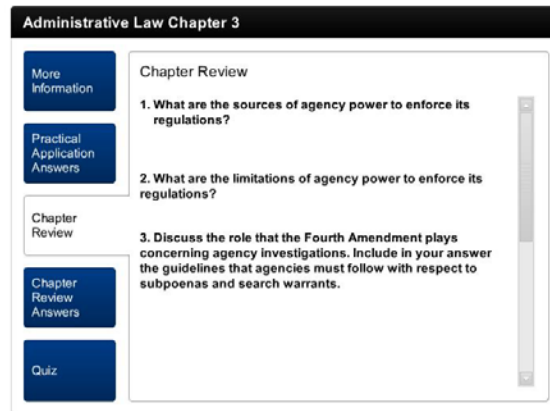
The EEOC will issue a notice closing the case and giving the charging party 90 days in which to file a lawsuit on his or her behalf.

4. Go to the Web site of the U.S. Department of Labor at <http://www.dol.gov> and state five laws that are enforced by the Department of Labor.

- Fair Labor Standards Act (FLSA)
- Occupational Safety and Health (OSH)
- Longshore and Harbor Workers' Compensation Act (LHWCA)
- Employee Retirement Income Security Act (ERISA)
- Labor-Management Reporting and Disclosure Act of 1959 (also known as the Landrum-Griffin Act)
- Uniformed Services Employment and Reemployment Rights Act

Chapter Review

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Administrative Law Chapter 3

Chapter Review

1. What are the sources of agency power to enforce its regulations?
2. What are the limitations of agency power to enforce its regulations?
3. Discuss the role that the Fourth Amendment plays concerning agency investigations. Include in your answer the guidelines that agencies must follow with respect to subpoenas and search warrants.

Step Text

1. What are the sources of agency power to enforce its regulations?
2. What are the limitations of agency power to enforce its regulations?
3. Discuss the role that the Fourth Amendment plays concerning agency investigations. Include in your answer the guidelines that agencies must follow with respect to subpoenas and search warrants.
4. Discuss the role that the Fifth Amendment plays concerning agency investigations. Include in your answer the distinction that the United States Supreme Court has made between documents obtained by a subpoena and a search warrant.

Chapter Review Answers

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The screenshot shows a digital interface for 'Administrative Law Chapter 3'. On the left, there is a vertical navigation menu with five blue buttons: 'More Information', 'Practical Application Answers', 'Chapter Review', 'Chapter Review Answers', and 'Quiz'. The main content area is titled 'Chapter Review Answers' and contains three numbered questions with their respective answers. A vertical scrollbar is visible on the right side of the content area.

Administrative Law Chapter 3

Chapter Review Answers

- 1. What are the sources of agency power to enforce its regulations?**
Agencies are empowered to enforce their regulations by requiring those they regulate to first collect information and then disclose that information when the agency requests it.
- 2. What are the limitations of agency power to enforce its regulations?**
The request must be authorized by law, relevant, and not overly burdensome.
- 3. Discuss the role that the Fourth Amendment plays concerning agency investigations. Include in your answer the guidelines that agencies must follow with respect to subpoenas and search warrants.**
As to search warrants, agencies must abide by the Fourth Amendment; however, agencies do not have to meet the strict requirements of probable cause required in the criminal law setting. The U.S. Supreme Court has ruled that warrants are not required for random drug testing for certain government employees.

Step Text

1. What are the sources of agency power to enforce its regulations?

Agencies are empowered to enforce their regulations by requiring those they regulate to first collect information and then disclose that information when the agency requests it.

2. What are the limitations of agency power to enforce its regulations?

The request must be authorized by law, relevant, and not overly burdensome.

3. Discuss the role that the Fourth Amendment plays concerning agency investigations. Include in your answer the guidelines that agencies must follow with respect to subpoenas and search warrants.

As to search warrants, agencies must abide by the Fourth Amendment; however, agencies do not have to meet the strict requirements of probable cause required in the criminal law setting. The U.S. Supreme Court has ruled that warrants are not required for random drug testing for certain government employees such as law enforcement agents and for occupations involving public safety such as railroad employees. Students involved in extracurricular activities in public schools can be searched and drug tested without a search warrant.

Many agencies have the power to issue subpoenas. If the subpoena is not honored, the agency must go to court to get a judge to enforce the subpoena. As with search warrants, a less demanding standard applies to issuance of administrative subpoenas.

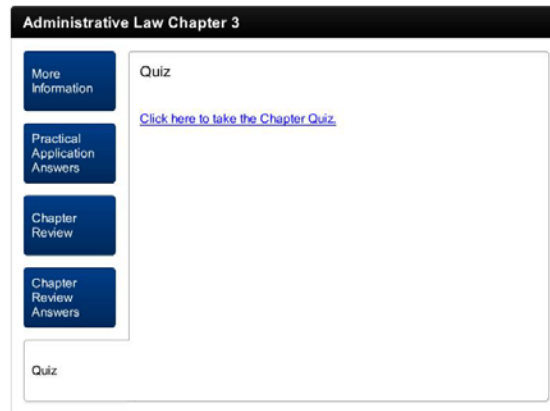
4. Discuss the role that the Fifth Amendment plays concerning agency investigations. Include in your answer the distinction that the United States Supreme Court has made between documents obtained by a subpoena and a search warrant.

The Fifth Amendment protects an individual from being compelled to be a witness against himself, known as “taking the Fifth.” This right can be invoked at a variety of settings including trials, grand juries, and before Congress. There is no right to refuse to give blood samples, DNA samples, or fingerprints since these are not “testimony.”

As to the distinction between a subpoena and a search warrant, the Supreme Court has stated that, although the Fifth Amendment may protect an individual from complying with a subpoena for the production of his personal records in his possession because the very act of production may constitute a compulsory authentication of incriminating information, a seizure of the same materials by law enforcement officers differs in a crucial respect - the individual against whom the search is directed is not required in the discovery, production, or authentication of incriminating evidence.

Quiz

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The screenshot shows a user interface for 'Administrative Law Chapter 3'. On the left is a vertical sidebar with four blue buttons: 'More Information', 'Practical Application Answers', 'Chapter Review', and 'Chapter Review Answers'. The main content area on the right has a title 'Quiz' and a blue hyperlink that reads 'Click here to take the Chapter Quiz.' Below the main content area, there is a small box with the word 'Quiz' inside.

Step Text

[Click here to take the Chapter Quiz.](#)