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FEDERAL REGULATORY  
ACTION AND CONTROL

# FEDERAL REGULATORY ACTION AND CONTROL

BY  
FREDERICK F. BLACHLY  
AND  
MIRIAM E. OATMAN



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## AUTHORS' PREFACE

During the last fifty years there has been a remarkable and rapid development of federal intervention in the realm of private economic activity. Today six or seven hundred statutory provisions are applicable to this realm in one way or another. These provisions represent a more and more clearly defined public policy of economic regulation.

To outline a policy does not make it self-enforcing. In order that the expressed will of Congress may be carried out, it has been necessary to organize suitable agencies for the administration of various laws; to bestow powers and functions upon such agencies; to determine their relationship to other officers and agencies of government; to prescribe procedures; to develop and perfect forms of administrative action; to provide means of enforcing the acts of each agency; and to establish proper controls over such acts. These methods are all requisite to the double end sought by Congress: the protection of the individual as to guaranteed rights, and the efficient administration of federal economic policy.

Every method employed must be permissible under the Constitution of the United States, as interpreted and applied. For example, general policy must be outlined by Congress, and delegations of legislative power to administrative agencies must be specific and limited. Administrative and executive agencies cannot disregard or control the acts of the courts. Where constitutional rights are involved, any procedure established for administrative acts must safeguard such rights. Administrative officers may not be arbitrary or capricious in their acts. All these principles and many more have been respected and applied by Congress, the administrative system, and the courts, in the performance of their respective functions.

Today, as never before, the methods by which federal economic and social policies are administered are being examined and questioned for many reasons and from many quarters. The economic stresses of years past have naturally caused an increased interest in the subject of the relations between government and economic activities. As a result of such interest and the investigations to which

it has led, three chief schools of thought have developed, which hold, respectively: (1) that the whole process of government administration should be under greater executive control; (2) that the process should be subjected to a more pervasive and strict judicial control; and (3) that after careful study of the whole situation, necessary changes should be made, whatever they may be.

This little book, which is largely preliminary in nature, describes briefly the organization, legal status, and relationships of the federal administrative system. The various plans that have been advocated for improvement of this system are also examined, both factually and critically.

The primary object of the book is to contribute toward an understanding of the multitude of problems in law and administration which must be solved if federal intervention in the economic realm is to be both efficient and legal. In this study no questions are raised concerning either the value of the constitutional structure within which federal administration must function, or the wisdom of Congress in adopting certain economic policies and establishing the present types of government intervention. The inquiry is confined to the much narrower problem of explaining the principal features of the administrative system through which the economic policies of Congress are carried out, and of examining and evaluating suggestions for the improvement of that system, without reference to possible changes in the Constitution.

In the preparation of this book the authors have necessarily received much assistance from others. Some of this assistance has consisted in broad discussions of questions of policy or constitutional or administrative law. Some of it has been obtained from manuscripts written by persons who kindly permitted the authors to examine their studies. Invaluable criticism has been given by many specialists in various fields. A host of government officers have been good enough to answer detailed technical questions and to supply both published and unpublished information. For all this assistance the authors are deeply grateful.

Especial thanks to persons outside the Brookings Institution are due to Mr. Thomas B. Billig of the Federal Security Agency; Mr. Robert M. Cooper, special assistant to the Attorney General of

the United States; Professor Robert E. Cushman of Cornell University; Professor Oliver P. Field of Indiana State University; Mr. Robert E. Freer, chairman of the Federal Trade Commission; Professor Ralph F. Fuchs of Washington University; Professor Walter Gellhorn, director of the Attorney General's Committee on Administrative Procedure; Mr. Gregory Hankin, with the Federal Power Commission; Professor James Hart of the University of Virginia; Professor Charles Grove Haines of the University of California at Los Angeles; Mr. I. J. Lowe of the Department of Agriculture; Mr. Aldo L. Raffa, with the Railroad Retirement Board; Mr. J. Emmett Sebree, with the Board of Tax Appeals; and Mr. Ashley Sellers, head attorney, Office of the Solicitor in the Department of Agriculture.

Within the Brookings Institution, valuable assistance has been given by Mr. Charles L. Dearing, Mr. Willard C. Matthias, and Mr. Daniel T. Selko. Particular thanks are due to Mr. Lewis Meriam, who has not only acted as the chairman of the committee and general editor for this publication, but has also given much valuable advice. The other members of the committee who cooperated with the authors in the preparation of this volume are Mr. Meyer Jacobstein, Mr. Arthur C. Millspaugh, and Mr. Laurence F. Schmeckebier, to all of whom the authors wish to express their gratitude.

No person who has been mentioned is responsible in any way for the faults or shortcomings of this book, as to which the sole responsibility must belong to the authors. They are painfully conscious of the fact that a study which embraces so large a part of federal administrative law and practice cannot be perfect. It is their hope, however, that any faults of detail which may appear cannot vitiate their main contention that there is a highly developed federal administrative system which should be understood before efforts are made to change it.

Because of the nature of the subject matter, a detailed table of contents has been made, rather than an index.

FREDERICK F. BLACHLY  
MIRIAM E. OATMAN

February 1940



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