

## ADMINISTRATIVE PROCEDURE ACT (APA)

There are no Judicial courts in America and there has not been since 1789. Judges do not enforce Statutes and Codes. Executive Administrators enforce Statutes and Codes. (FRC v. GE 281 US 464, Keller v. PE 261 US 428, 1 Stat. 138-178)

There have not been any Judges in America since 1789. There have just been Administrators. (FRC v. GE 281 US 464; Keller v. PE 261 US 428 1Stat. 138-178).

**Administrative law** is the body of law that arises from the activities of administrative agencies of government. Government agency action can include rulemaking, adjudication, or the enforcement of a specific regulatory agenda. Administrative law is considered a branch of public law. As a body of law, administrative law deals with the decision-making of administrative units of government (e.g., tribunals, boards or commissions) that are part of a state regulatory.

The types of administrative actions that can be challenged must be "concrete actions" which include: (1) administrative punishments (such as detentions and fines), (2) administrative coercive measures, (3) interference with the operations of enterprises, (4) refusal to take action or perform an obligation, (5) unlawful demands for performance of duties, and (6) violations of rights of the person or a property right. The review of state action is carried out in the local courts. Court review of agency action is not permitted for state action involving national defense or foreign affairs. Moreover, the court cannot review administrative legislation.

An **administrative proceeding** is a *non-judicial* determination of fault or guilt and may include in some cases penalties of various forms.

The **Administrative Procedure Act (APA)** is the United States federal law that governs the way in which administrative agencies of the federal government of the United States may propose and establish regulations. The APA also sets up a process for the United States federal courts to directly review agency decisions. The APA became law in 1946.

The APA applies to both the federal executive departments and the independent agencies. (Consumer Product Safety Commission, Equal Employment Opportunity Commission, Federal Deposit Insurance Commission, etc. ... **not the IRS!** See Diversified Metals.) the text of the APA can be found under Title 5 of the United States Code, beginning at Section 500.

### HISTORY

The APA was enacted to regulate and standardize federal agency procedures during a period of expanding federal governmental power, following the Great Depression and World War II. Beginning in 1933, Roosevelt and the Democratic Congress enacted several statutes that created new federal agencies. The statutes were part of Roosevelt's New Deal legislative plan designed to deliver the United States from the social economic hardship of the Great Depression.

The APA was more or less a compromise to satisfy the New Deal of FDR. It more or less prevented the Federal Government from becoming a dictatorial entity.

A 1946 US House of Representatives report discusses the 10-year period of “painstaking and detailed study and drafting” that went into the APA. Because of rapid growth in the administrative regulation of private conduct, Roosevelt ordered several studies of administrative methods and conduct during the early part of his four-term presidency. Based on one study, Roosevelt commented that the practice of creating administrative agencies with the authority to perform both legislative and judicial work “threatens to develop a fourth branch of government for which there is no sanction in the Constitution.

In 1939, Roosevelt requested that Attorney General Frank Murphy form a committee to investigate practices and procedures in American administrative law and suggest improvement. That committee’s report, contains detailed information about the development and procedures of the federal agencies.

The Final Report defined a federal agency as a governmental unit with the “the power to determine ... private rights and obligations” by rulemaking or adjudication. The Final Report applied that definition to the largest units of the federal government, and identified “19 executive departments and 18 independent agencies.” If various subdivisions of the larger units were considered, the total number of federal agencies at that time increased to 51. In reviewing the history of US government agencies, the FINAL Report noted that almost all agencies had undergone changes in name and political function.

Of the 51 federal agencies discussed in the Final Report, 11 were created by statute in the period prior to the Civil War. In the period from 1865 to 1900, 6 new agencies were created. Most notable was the formation of the Interstate Commerce Commission, created in 1887 in response to widespread criticism of the railroad industry. The period of 1900 to 1940, however, saw the greatest expansion of federal administrative power, with 35 new agencies created by statute. Eighteen of these were created during the 1930s, from statutes enacted as part of Roosevelt’s New Deal. The Final Report made several recommendations about standardizing administrative procedures, but Congress delayed action because the US entered World War II.

Since 2005, the House Judiciary Committee has been undertaking an Administrative Law, Process and Procedure Project to determine what, if any, changes should be made to the Administrative Procedure Act.

## BASIC PURPOSE

Agencies are unique governmental bodies, exercising powers characteristic of all three branches of the United States federal government: judicial, legislative and executive. As recognized by President Franklin D. Roosevelt and others, the creation and function of federal agencies can cause separation of powers issues under the US Constitution. To provide constitutional safeguards, the APA creates a framework for regulation agencies and their unique role.

According to the Attorney General's Manual on the Administrative Procedure Act (1947), drafted after the 1946 enactment of the APA, the basic purposes of the APA are: (1) to require agencies to keep the public informed of their organization, procedures and rules; (2) to provide for public participation in the rulemaking process; (3) to establish uniform standards for the conduct of formal rulemaking and adjudication; (4) to define the scope of judicial review.

The APA's provisions apply to many federal governmental institutions. The APA in section 551(1) defines an "agency" as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency," with the exception of several enumerated authorities, including the Congress, federal courts, and governments of territories or possessions of the United States. Courts have also held that the US President is not an agency under the APA. Franklin vs. Mass., 505 U.S. 788 (1992).

The Final Report organized federal administrative action into two parts: adjudication and rulemaking.

Agency adjudication was broken down further into two distinct phases of formal and informal adjudication.

Formal adjudication involved a 'trial-like hearing with witness testimony, a written record and a final decision. Under informal adjudication, however, agency decisions are made without formal 'trial-like' procedures, using "inspections, conferences and negotiations" instead. Because formal adjudication produces a record of proceedings and a final decision, it may be subject to "judicial review". As for rulemaking resulting in agency rules and regulations, the Final Report noted that many agencies provided due process through hearings and investigations, but there was a need for well-defined, uniform standards for agency adjudication and rulemaking procedures.

## STANDARD OF JUDICIAL REVIEW

APA requires that in order to set aside agency action, the court must conclude that the regulation is "arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law".

Arbitrary:

Capricious:

Abuse of discretion:

Not in accordance with the Law: