

## The Administrative Procedure Act [TRANSCRIPT & SHOW NOTES]

### A Hard Look's Quick Look Series | Episode 3 | Administrative Procedure Act

[Intro Music]

[Sophia Navedo] Welcome back to “A Hard Look” by the Administrative Law Review. My name is Sophia Navedo—the senior tech editor and third-year law student at American University Washington College of Law.

Today’s episode is part of our “Quick Look” series, in which we provide a synthesized explanation of an administrative law concept or doctrine.

Our second episode in this series provides an overview of the **Administrative Procedure Act**—the foundational statute governing administrative law in the United States.

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[5 Second Music Transition]

Enacted in 1946, the APA provides a framework for federal agencies to operate transparently, fairly, and within their legal boundaries. It standardizes how agencies create rules, conduct hearings, and interact with the public, ensuring fairness and accountability in administrative governance. In the next few minutes, we’ll discuss its origins, key provisions, and the critical role it plays in our government.

[2-3 Second Music Transition]

The APA was born out of necessity.

In the wake of the New Deal era of the 1930s, the federal government saw a rapid expansion of administrative agencies tasked with implementing sweeping new programs to address economic and social crises.

However, agencies were perceived as wielding significant authority in inconsistent ways, without clear procedural safeguards, or checks and balances because they could: create regulations, enforce them, and adjudicate disputes, all within the same entity. Critics labeled this as a potential violation of the **separation of powers**, as agencies seemed to combine legislative, executive, and judicial functions.

In the 1930’s Congress passed a law that would’ve significantly restricted agency powers, but President Franklin Roosevelt vetoed it. FDR then established the Attorney General’s Committee on Administrative Procedure that undertook a large-scale study of agency

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operations and identified significant inconsistencies. This helped set in motion the drafting of the APA, which after the end of World War II was enacted unanimously by Congress in 1946.

Since then, the Act has been amended rather sparingly and has served to create a standardized procedural framework for agency operations—essentially, a “*constitution*” for administrative agencies. The Act sought to balance the need for efficient governance with the protection of individual rights, laying the groundwork for modern administrative law. Its objectives included:

- **Regulating Agency Processes** by establishing procedures for rulemaking, adjudication, and public participation.
- **Ensuring Fairness and Transparency** by mandating that agencies provide public notice of proposed rules, allow public feedback, and proactively make certain agency documents accessible.
- **And Clarifying Judicial Review** by defining how courts could review agency actions to ensure they remain lawful and reasonable.

The APA provides a procedural framework for three primary functions of administrative agencies: **rulemaking**, **adjudication**, and **judicial review**. Let’s explore these in a little more detail:

***Rulemaking is an agency’s Quasi-Legislative Function. It is the process by which agencies develop and issue regulations that have the force of law. The APA outlines two main categories of rulemaking: Formal and Informal.***

**Formal Rulemaking** is a highly structured process and resembles a court trial. It involves:

- A hearing with the presentation of evidence.
- Witness testimony and cross-examination.
- And a detailed record of the proceedings.

For formal rulemaking to be triggered, the phrase “on the record” must appear in the statute an agency is tasked with enforcing. Because the process is cumbersome, procedures are not well-adapted to this sort of policymaking, formal rulemaking is relatively rare and typically reserved for highly technical issues, such as regulations involving food additives or ratemaking.

**On the other hand, Informal Rulemaking—otherwise known as Notice-and-comment— is the usual method by which rules are created. It requires that agencies:**

- Publish a notice of proposed rulemaking in the Federal Register.
- Allow a public comment period during which individuals, businesses, and organizations can provide feedback.
- And that agencies accompany any final rule with a preamble that sets forth the basis of the rule, and—as interpreted by the courts—the agency’s response to the public comments..

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This process promotes transparency and ensures that the rulemaking process has taken into account diverse perspectives and are well-informed. We'll explore **informal** rulemaking in further depth on a future episode.

*The second agency role—**Adjudication—is an agency's Quasi-Judicial Function.***

Adjudication refers to how agencies resolve disputes and enforce regulations in specific cases. Like court proceedings, adjudication involves applying agency statutes and regulations to particular facts. The APA distinguishes between two types: Formal and Informal.

**Formal Adjudication** involves hearings conducted by administrative law judges—also referred to as ALJs. It includes:

- Presentation of evidence by both parties.
- Witness testimonies and cross-examinations.
- And an initial written decision issued by the ALJ, which can often be appealed to a higher authority within the agency or to a federal court.

An example of this process is a situation where the National Labor Relations Board adjudicates a dispute between an employer and a union regarding unfair labor practices. Another is an adjudication by the Social Security Administration to determine if an applicant is eligible for benefits.

**As implied in the name, Informal Adjudication** is less structured, does not follow strict procedural rules, and is used for routine matters, such as processing benefits claims or resolving minor regulatory violations. The APA does not contain a full set of procedures for these adjudications, so they are mostly governed by the Due Process Clause of the Fifth Amendment, as interpreted by the federal courts.

An example of this process would be when the Department of Veterans Affairs decides on a veteran's benefits claim, with the adjudicator actively gathering information and making a decision based on the facts presented, rather than a full, adversarial hearing. Some informal adjudications are decided without any sort of oral evidentiary hearing but instead only on paper submissions, for example whether to award a federal grant or to disclose a document under the Freedom of Information Act.

In sum, adjudication ensures agencies can enforce their statutes and regulations efficiently while providing affected parties with a fair hearing.

*The third, critical provision in the APA, is **Judicial Review, which will also be discussed in greater detail on a future episode. But as a brief note, the Act recognizes that courts can review agency actions to ensure they:***

- Are constitutional.

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- Do not exceed their statutory authority.
- Comply with procedural requirements.
- And are not arbitrary, capricious, or an abuse of discretion.

Judicial review serves as a crucial check on administrative power, ensuring agencies remain accountable and operate within the law.

*While the APA sets general procedural standards, there are other factors which shape administrative procedure.*

- **Congress** can establish additional or more stringent procedures for agencies through their **enabling statutes**, or through **other government-wide procedural statutes** such as *The Government in the Sunshine Act* or *the Privacy Act*.
- Similarly, the **President** can influence agency operations through **executive orders**, shaping how agencies implement policies or prioritize regulatory goals.
  - Administrative procedures are also shaped by **constitutional principles**, such as the Due Process Clause. This ensures that agencies respect individuals' rights when government actions affect their life, liberty, or property. As we'll discuss in an upcoming episode, the **Constitution** also limits Congress's delegation of authority to agencies. For example, in 1928, the Supreme Court determined that the Constitution requires Congress to provide an "**intelligible principle**" to guide agency actions and decisions.

#### [4-5 Second Music Transition]

The Administrative Procedure Act revolutionized how federal agencies operate and how they are held accountable. Its directives for rulemaking, adjudication, openness, and judicial review ensure that agencies serve the public interest while adhering to the rule of law.

The APA continues to serve as the foundation of administrative law, ensuring federal agencies operate transparently, fairly, and consistently. Scholars debate its scope, with some viewing it as the central framework for administrative law and others seeing it as one of many legal influences on agency operations. Regardless, the APA remains a critical tool for balancing effective governance with the protection of individual rights.

#### [2-3 Second Music Transition]

Let's briefly recap our main points:

- The APA was enacted in 1946 in response to the rapid growth of federal agencies during the New Deal era.

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- The purpose of the APA is to standardize agency procedures, ensure transparency, facilitate public participation in rulemaking, and provide judicial oversight of agency actions.
- Key provisions of the APA include: rulemaking (formal and informal), adjudication (also formal and informal), and judicial review.
- And friendly reminder: **It's the Administrative "*Procedure*" Act not "*Procedures*".** Big shoutout to every admin law professor that has really driven this point home.

### [2-3 Second Music Transition]

If you enjoyed this episode, please take a second to leave a review and rating on your favorite listening app and be sure to subscribe, so you don't miss future episodes. We'd love to cover your questions on administrative law, so let us know if you have any questions, we can answer this season.

Stay tuned for future episodes, where we'll dive deeper into the principles shaping administrative law and its impact on our daily lives. And as always, thanks for tuning in to "A Hard Look"!

### [7-10 Second Music Outro]

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### [SHOW NOTES]

Read more about federal agencies here:

- [Administrative Procedure Act, Pub L. No. 79-404, 324 Stat. 237 \(1946\)](#)
- [ACUS Sourcebook](#)
- [Judicial Review Under the Administrative Procedure Act \(APA\)](#) by Congressional Research Service
- [Administrative Law and Regulatory Policy: Problems, Text, and Cases](#) by Stephen G. Breyer, et al.
- George B. Shepherd, *The Administrative Procedure Act Emerges from New Deal Politics*, 90 Nw. L. Rev. 1557 (1996).
- [The Federal Register](#)