

United States administrative law

United States administrative law encompasses a number of [statutes](#) and [cases](#) which define the extent of the powers and responsibilities held by administrative [agencies](#) of the [United States Government](#). The [executive](#), [legislative](#), and [judicial](#) branches of the [U.S. federal government](#) cannot always directly perform their [constitutional](#) responsibilities. Specialized powers are therefore delegated to an agency, board, or commission. These administrative governmental bodies oversee and monitor activities in complex areas, such as commercial aviation, medical device manufacturing, and securities markets.

[Justice Breyer](#) defines administrative law in four parts. Namely, the legal rules and principles that: (1) define the authority and structure of administrative agencies; (2) specify the procedural formalities employed by agencies; (3) determine the validity of agency decisions; and (4) define the role of reviewing courts and other governmental entities in relation to administrative agencies. ^[1]

U.S. federal agencies have the power to adjudicate, legislate, and enforce laws within their specific areas of delegated power. Agencies "legislate" through [rulemaking](#) - the power to promulgate (or issue) regulations administrative law is codified as the [Code of Federal Regulations](#).

Scope of administrative authority

The authority of administrative agencies stems from their [organic statute](#), and must be consistent with constitutional constraints and [legislative intent](#). Generally speaking, therefore, agencies do not have the power to enact a regulation where:

1. The regulation is an [unconstitutional delegation of power](#) (under current caselaw, courts almost never invalidate a regulation on this ground);
2. The organic statute explicitly denies authority (but note that failure to grant authority in later legislative efforts is not dispositive);
3. The regulation is not based on factual findings;
4. The regulation is not pursuant to serving the "public convenience, interest, or necessity"; or
5. The regulation is outside the agency's statutory purpose as articulated in its organic statute.

Adjudicative versus rule-making acts

Agency acts are divided into two broad categories: [rulemaking](#) and [adjudication](#). The scope of these two categories is defined in three ways:

Londoner/Bimetallic definition

Factors tending to make an act adjudicative in nature:

- Involving a small number of people

- Individuals involved are specially affected by the act
- Decision based on the facts of an individual case, rather than policy concerns

Cases in which an act was ruled to be adjudicative:

- [*Londoner v. City and County of Denver*](#), involving a tax levied on residents of a particular street without affording them the opportunity to have their objections heard in person.

Cases in which an act was ruled to be rulemaking:

- [*Bi-Metallic Investment Co. v. State Board of Equalization*](#), involving a tax levied on the entire city of Denver.

Administrative Procedure Act

According to section 551 of the [Administrative Procedure Act](#),

- [Rulemaking](#) is "an agency process for formulating, amending, or repealing a rule."
 - A [rule](#) in turn is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy;"
- [Adjudication](#) is "an agency process for the formulation of an order;"
 - An [order](#) in turn is "the whole or part of a final disposition ... of an agency in a matter other than rule making but including licensing;"

Adjudication

Right to a hearing

There are two ways that an individual can attain the right to a hearing in an adjudicative proceeding. First, the [Due Process](#) clause of the [5th Amendment](#) or [14th Amendment](#) can require that a hearing be held if the interest that is being adjudicated is sufficiently important or if, without a hearing, there is a strong chance that the petitioner will be erroneously denied that interest. ^[2] A hearing can also be required if a statute somehow mandates the agency to hold formal hearings when adjudicating certain issues.

Rulemaking

Scope and extent of rulemaking power

Federal administrative agencies have the power to [promulgate](#) rules that have the effect of substantive law. The power to do so stems from the agency's [organic statute](#), and extends to all regulations necessary to carry out the purposes of the Act, rather than being limited to powers expressly granted by the statute. The power extends to [substantive rules](#) as well as [procedural rules](#).^[3] By contrast, many states, such as [Kentucky](#), have been less willing to allow their agencies to promulgate rules with the effect of substantive law.

Agencies may not promulgate [retroactive rules](#) unless expressly granted such power by the [organic statute](#). *Bowen v. Georgetown University Hospital*, 488 [U.S. 204](#) (1988)

The choice of whether to [promulgate](#) rules or proceed with [ad hoc](#) adjudicative decisions rests in the informed discretion of agencies. *SEC v. Chenery Corp.*, 332 [U.S. 194](#) (1947) (Dissenting opinion arguing that the decision permitted agencies to rule arbitrarily, without law). Agencies may also announce new policies in the course of such adjudications.

Agencies are permitted to rely on rules in reaching their decisions rather than adjudicate, where the promulgation of the rules is within the agency's statutory authority, and the rules themselves are not arbitrary or capricious. *Heckler v. Campbell*, 461 [U.S. 458](#) (1983).

Agencies must abide by their own rules and regulations. *Accardi v. Shaughnessy*, 347 [U.S. 260](#) (1954).

There are three types of [rulemaking](#):

- [Formal rulemaking](#), which is rulemaking for which the [organic statute](#) requires that rules be "made on the record after agency opportunity for hearing," and for which the APA prescribes particular procedures; the phrase is required for formal rulemaking; simply requiring that rules be made "after a hearing" does not trigger the requirements of formal rulemaking;
- [Informal rulemaking](#), which is rulemaking for which no procedural requirements are prescribed in the [organic statute](#), and for which the APA requires notice and comment;
- [Hybrid rulemaking](#), which is rulemaking for which particular procedural requirements beyond notice and comment, but not rising to the level of formal rulemaking.

State-level administrative law

[States](#) may have their own administrative law; for example, a [state constitution](#) may allow the [legislature](#) to delegate [rulemaking](#) authority to an executive or independent agency, and [state governments](#) may provide an [administrative appeal](#) process for people who are dissatisfied with decisions made by certain [state](#) agencies.

California has an extensive body of administrative law including a [hearing agency](#) that requires its administrative law judges to be lawyers. California statutory law governing the hearing agency states that [non-lawyers](#) may appear before it. However, California case law holds that [former attorneys](#) who no longer practice law may [not appear](#) before it. Most California agencies adjudicate license cases utilizing the [California Attorney General's legal staff](#). However, others (including the [Department of Corporations](#) and [Insurance](#)) utilize their own legal staff.

Journals & Publications

- [Administrative Law Review](#) is the official quarterly publication of the [American Bar Association's](#) Section on Administrative Law and Regulatory Practice, published in coordination with American University [Washington College of Law](#).
- The [Texas Tech](#) Administrative Law Journal specializes in administrative law topics.

- William Funk, J.D., *Administrative Procedure and Practice: Problems and Cases*, [ISBN 0314155171](#), Thomson West, 3rd ed., 2006.
- William Funk, J.D., *Administrative Law: Examples and Explanations*, [ISBN 0735558914](#), Aspen Publishers, 2nd ed., 2006.

Notes

1. [^](#) Breyer, Stephen, et al., *Administrative Law & Regulatory Policy*, Fifth Edition, at p. 3 (Aspen Pub. 2001)
2. [^](#) *Mathews v. Eldridge*
3. [^](#) *National Petroleum Refiners Assn. v. FTC*, 482 F.2d 672 (D.C. Cir. 1983), *cert. denied*, 415 U.S. 951 (1974).

See also

- [Administrative law judge](#)
- [Article I and Article III tribunals](#)
- [List of significant administrative law cases](#)

External links

- [American Bar Association](#) Section of Administrative Law & Regulatory Practice
- [LII Law about administrative law](#)
- [Administrative Law and Procedure](#), legal definitions
- **From Wikipedia**