

# Rulemaking and Adjudication

Administrative Law

Penn State Dickinson Law

February 5, 2026



# APA: what's where

- **5 U.S.C. § 551:** definitions
- 5 U.S.C. § 553: rulemaking procedure
- 5 U.S.C. § 554: adjudication procedure
- 5 U.S.C. § 555: "ancillary matters"
- 5 U.S.C. § 556: hearing procedures
- 5 U.S.C. § 557: decision procedures



# APA: what's where

- **5 U.S.C. § 551:** definitions
- **5 U.S.C. § 553:** rulemaking procedure
- 5 U.S.C. § 554: adjudication procedure
- 5 U.S.C. § 555: "ancillary matters"
- 5 U.S.C. § 556: hearing procedures
- 5 U.S.C. § 557: decision procedures



# APA: what's where

- **5 U.S.C. § 551:** definitions
- **5 U.S.C. § 553:** rulemaking procedure
- **5 U.S.C. § 554:** adjudication procedure
- 5 U.S.C. § 555: "ancillary matters"
- 5 U.S.C. § 556: hearing procedures
- 5 U.S.C. § 557: decision procedures



# APA: what's where

- **5 U.S.C. § 551:** definitions
- **5 U.S.C. § 553:** rulemaking procedure
- **5 U.S.C. § 554:** adjudication procedure
- **5 U.S.C. § 555:** "ancillary matters"
- **5 U.S.C. § 556:** hearing procedures
- **5 U.S.C. § 557:** decision procedures



# APA: what's where

- **5 U.S.C. § 551:** definitions
- **5 U.S.C. § 553:** rulemaking procedure
- **5 U.S.C. § 554:** adjudication procedure
- **5 U.S.C. § 555:** "ancillary matters"
- **5 U.S.C. § 556:** hearing procedures
- **5 U.S.C. § 557:** decision procedures



# APA: what's where

- **5 U.S.C. § 551:** definitions
- **5 U.S.C. § 553:** rulemaking procedure
- **5 U.S.C. § 554:** adjudication procedure
- **5 U.S.C. § 555:** " ancillary matters"
- **5 U.S.C. § 556:** hearing procedures
- **5 U.S.C. § 557:** decision procedures



# Rulemaking

- The major regulatory tool.
- Together, federal agencies produced around 3300 final rules in 2024.
- Of these, approximately 350 were designated as “significant” owing to their substantial economic, legal or policy effects (greater than \$200 million economic effect per year or other significant impact).
- By comparison, the 118th Congress passed 274 bills, nearly 100 of which renamed post offices and other federal facilities.



# Rulemaking

- The major regulatory tool.
- Together, federal agencies produced around 3300 final rules in 2024.
- Of these, approximately 350 were designated as “significant” owing to their substantial economic, legal or policy effects (greater than \$200 million economic effect per year or other significant impact).
- By comparison, the 118th Congress passed 274 bills, nearly 100 of which renamed post offices and other federal facilities.



# Rulemaking

- The major regulatory tool.
- Together, federal agencies produced around 3300 final rules in 2024.
- Of these, approximately 350 were designated as “significant” owing to their substantial economic, legal or policy effects (greater than \$200 million economic effect per year or other significant impact).
- By comparison, the 118h Congress passed 274 bills, nearly 100 of which renamed post offices and other federal facilities.



# Rulemaking

- The major regulatory tool.
- Together, federal agencies produced around 3300 final rules in 2024.
- Of these, approximately 350 were designated as “significant” owing to their substantial economic, legal or policy effects (greater than \$200 million economic effect per year or other significant impact).
- By comparison, the 118h Congress passed 274 bills, nearly 100 of which renamed post offices and other federal facilities.



# Adjudication

- When agencies decide “cases.”
- No reliable figure on how many are decided a year. Social Security Administration alone may have more than 2 million disability benefit claims submitted a year.
- There are approximately 12,000 administrative adjudicators working in the federal government, including approximately 2,000 administrative law judges.
- By comparison, there are fewer than 900 authorized federal judgeships.



# Adjudication

- When agencies decide “cases.”
- No reliable figure on how many are decided a year. Social Security Administration alone may have more than 2 million disability benefit claims submitted a year.
- There are approximately 12,000 administrative adjudicators working in the federal government, including approximately 2,000 administrative law judges.
- By comparison, there are fewer than 900 authorized federal judgeships.



# Adjudication

- When agencies decide “cases.”
- No reliable figure on how many are decided a year. Social Security Administration alone may have more than 2 million disability benefit claims submitted a year.
- There are approximately 12,000 administrative adjudicators working in the federal government, including approximately 2,000 administrative law judges.
- By comparison, there are fewer than 900 authorized federal judgeships.



# Adjudication

- When agencies decide “cases.”
- No reliable figure on how many are decided a year. Social Security Administration alone may have more than 2 million disability benefit claims submitted a year.
- There are approximately 12,000 administrative adjudicators working in the federal government, including approximately 2,000 administrative law judges.
- By comparison, there are fewer than 900 authorized federal judgeships.



# The APA's procedural categories

	<b>formal</b>	<b>informal</b>
<b>adjudication</b>		
<b>rulemaking</b>		

# The APA's procedural categories

	<b>formal</b>	<b>informal</b>
<b>adjudication</b>	formal adjudication	informal adjudication
<b>rulemaking</b>	formal rulemaking	informal rulemaking



# The APA's procedural categories

	<b>formal</b>	<b>informal</b>
<b>adjudication</b>	formal adjudication	
<b>rulemaking</b>		informal rulemaking



# NLRB v. Wyman-Gordon Co.

What was the NLRB's action in Excelsior Underwear?

- Is it an **order** or a **rule**?
- Is it **valid** or **invalid**?



# NLRB v. Wyman-Gordon Co.

What was the NLRB's action in Excelsior Underwear?

- Is it an **order** or a **rule**?
- Is it **valid** or **invalid**?



# NLRB v. Wyman-Gordon Co.

What was the NLRB's action in Excelsior Underwear?

- Is it an **order** or a **rule**?
- Is it **valid** or **invalid**?



# NLRB v. Wyman-Gordon Co.

breakdown of the votes

	<u>plurality</u> (Fortas, Burger Stewart, White)	<u>concurrence</u> (Black, Bren- nan, Marshall)	<u>dissents</u> (Douglas, Har- lan)
Excelsior Underwear policy is:	<b>invalid rule</b>	<b>valid order</b>	<b>invalid rule</b>
NLRB:	<b>wins</b> , because no rule needed to make WG comply	<b>wins</b> , because NLRB relies on valid order	<b>loses</b> , because a valid rule is required to make WG comply



# NLRB v. Wyman-Gordon Co.

## breakdown of the votes

	<u>plurality</u> (Fortas, Burger Stewart, White)	<u>concurrence</u> (Black, Bren- nan, Marshall)	<u>dissents</u> (Douglas, Har- lan)
Excelsior Underwear policy is:	<b>invalid rule</b>	<b>valid order</b>	<b>invalid rule</b>
NLRB:	<b>wins</b> , because no rule needed to make WG comply	<b>wins</b> , because NLRB relies on valid order	<b>loses</b> , because a valid rule is required to make WG comply



# APA: defining key terms

## 5 U.S.C. §551(4)

“rule” means 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 or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

## 5 U.S.C. §551(5)

“rule making” means agency process for formulating, amending, or repealing a rule;



# APA: defining key terms

## 5 U.S.C. §551(6)

“order” means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

## 5 U.S.C. §551(7)

“adjudication” means agency process for the formulation of an order;



# The (unstable) ideal types of rulemaking and adjudication

<b>Rulemaking</b>	<b>Adjudication</b>
making new policy	applying existing policy
large numbers of people affected	individual interests in particular at stake
decision turns on public information	decision turns on private information of affected individual
applies going forward	applies to the pending case



# National Petroleum Refiners v. FTC



# FTC Act

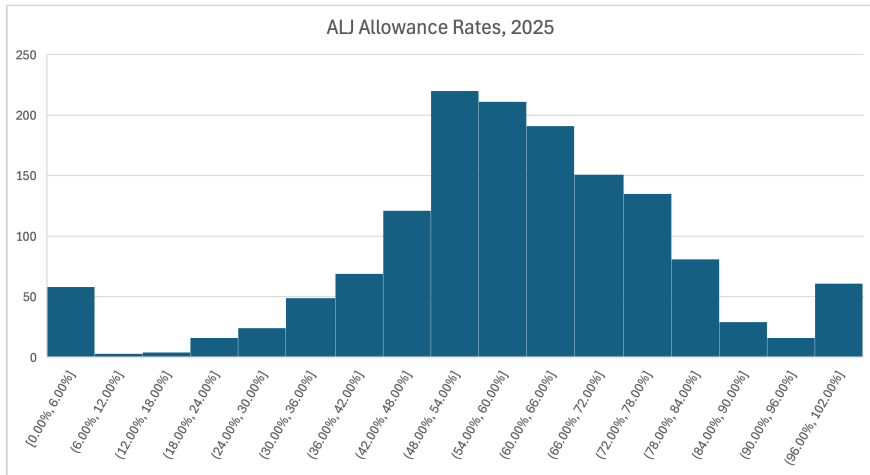
## 15 U.S.C. §45(a)

Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

<http://www.law.cornell.edu/uscode/text/15/46>: FTC Act



# ALJ Allowance Rates



# Heckler v. Campbell: the grid rule

TABLE NO. 2—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
202.01 .....	Advanced age .....	Limited or less .....	Unskilled or none .....	Disabled.
202.02 .....	.....do .....	.....do .....	Skilled or semiskilled—skills not transferable.	Do.
202.03 .....	.....do .....	.....do .....	Skilled or semiskilled—skills transferable <sup>1</sup> .	Not disabled.
202.04 .....	.....do .....	High school graduate or more—does not provide for direct entry into skilled work <sup>2</sup> .	Unskilled or none .....	Disabled.
202.05 .....	.....do .....	High school graduate or more—provides for direct entry into skilled work <sup>2</sup> .	.....do .....	Not disabled.
202.06 .....	.....do .....	High school graduate or more—does not provide for direct entry into skilled work <sup>2</sup> .	Skilled or semiskilled—skills not transferable.	Disabled.
202.07 .....	.....do .....	.....do .....	Skilled or semiskilled—skills transferable <sup>2</sup> .	Not disabled.
202.08 .....	.....do .....	High school graduate or more—provides for direct entry into skilled work <sup>2</sup> .	Skilled or semiskilled—skills not transferable.	Do.
202.09 .....	Closely approaching advanced age.	Illiterate or unable to communicate in English.	Unskilled or none .....	Disabled.
202.10 .....	.....do .....	Limited or less—at least literate and able to communicate in English.	.....do .....	Not disabled.
202.11 .....	.....do .....	Limited or less .....	Skilled or semiskilled—skills not transferable.	Do.
202.12 .....	.....do .....	.....do .....	Skilled or semiskilled—skills transferable.	Do.
202.13 .....	.....do .....	High school graduate or more	Unskilled or none .....	Do.

# Heckler v. Campbell: the grid rule

TABLE NO. 2—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
202.01 .....	Advanced age .....	Limited or less .....	Unskilled or none .....	Disabled.
202.02 .....	.....do .....	.....do .....	Skilled or semiskilled—skills not transferable.	Do.
202.03 .....	.....do .....	.....do .....	Skilled or semiskilled—skills transferable <sup>1</sup> .	Not disabled.
202.04 .....	.....do .....	High school graduate or more—does not provide for direct entry into skilled work <sup>2</sup> .	Unskilled or none .....	Disabled.
202.05 .....	.....do .....	High school graduate or more—provides for direct entry into skilled work <sup>2</sup> .	.....do .....	Not disabled.
202.06 .....	.....do .....	High school graduate or more—does not provide for direct entry into skilled work <sup>2</sup> .	Skilled or semiskilled—skills not transferable.	Disabled.
202.07 .....	.....do .....	.....do .....	Skilled or semiskilled—skills transferable <sup>2</sup> .	Not disabled.
202.08 .....	.....do .....	High school graduate or more—provides for direct entry into skilled work <sup>2</sup> .	Skilled or semiskilled—skills not transferable.	Do.
202.09 .....	Closely approaching advanced age.	Illiterate or unable to communicate in English.	Unskilled or none .....	Disabled.
202.10 .....	.....do .....	Limited or less—at least literate and able to communicate in English.	.....do .....	Not disabled.
202.11 .....	.....do .....	Limited or less .....	Skilled or semiskilled—skills not transferable.	Do.
202.12 .....	.....do .....	.....do .....	Skilled or semiskilled—skills transferable.	Do.
202.13 .....	.....do .....	High school graduate or more	Unskilled or none .....	Do.

# Rulemaking and Adjudication (continued)

Administrative Law

Penn State Dickinson Law

February 10, 2026



# Which provisions apply to what agency actions

## Rulemaking

informal	§ 553
formal	§§ 553, 556, 557

## Adjudication

informal	§ 555
formal	§§ 554, 556, 557



# Which provisions apply to what agency actions

## Rulemaking

informal	§ 553
formal	§§ 553, 556, 557

## Adjudication

informal	§ 555
formal	§§ 554, 556, 557



# Which provisions apply to what agency actions

## Rulemaking

informal	§ 553
formal	§§ 553, 556, 557

## Adjudication

informal	§ 555
formal	§§ 554, 556, 557



# Which provisions apply to what agency actions

## Rulemaking

informal	§ 553
formal	§§ 553, 556, 557

## Adjudication

informal	§ 555
formal	§§ 554, 556, 557



# a closer look at informal, a.k.a. notice-and-comment, rulemaking

§ 553 sets out:

- 1 when rulemaking requirements don't apply
- 2 what notice must be given
- 3 what public participation must be allowed
- 4 justification requirement



# a closer look at informal, a.k.a. notice-and-comment, rulemaking

§ 553 sets out:

- 1 when rulemaking requirements don't apply
- 2 what notice must be given
- 3 what public participation must be allowed
- 4 justification requirement



# a closer look at informal, a.k.a. notice-and-comment, rulemaking

§ 553 sets out:

- 1 when rulemaking requirements don't apply
- 2 what notice must be given
- 3 what public participation must be allowed
- 4 justification requirement



# a closer look at informal, a.k.a. notice-and-comment, rulemaking

§ 553 sets out:

- 1 when rulemaking requirements don't apply
- 2 what notice must be given
- 3 what public participation must be allowed
- 4 justification requirement



# 1. Exceptions to rulemaking procedures: § 553(a)

This section applies, according to the provisions thereof, except to the extent that there is involved -

- (1) a military or foreign affairs function of the United States; or
- (2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.



## 2. Notice requirements: § 553(b)

General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include -

- (1) a statement of the time, place, and nature of public rule making proceedings;
- (2) reference to the legal authority under which the rule is proposed; and
- (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

[But . . . exceptions for “interpretative rules,” general policy statements, organizational or procedural rules, and when good cause exists to forgo notice.]



## 2. Notice requirements: § 553(b)

General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include -

- (1) a statement of the time, place, and nature of public rule making proceedings;
- (2) reference to the legal authority under which the rule is proposed; and
- (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

**[But . . . exceptions for “interpretative rules,” general policy statements, organizational or procedural rules, and when good cause exists to forgo notice.]**



### 3. Participation opportunities: § 553(c), (e)

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

. . . .

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.



## 4. Justification requirement: § 553(c)

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. **After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose.** When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

