Commitment to Agency Discretion by Law

GOVPL 952: Administrative Law

Penn State Dickinson Law

April 14, 2026

Judicial Review under the APA

§702. Right of Review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. . . . Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

Judicial Review under the APA

§703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

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Judicial Review under the APA

Exclusions

§701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that –

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

Heckler v. Cheney

fitting APA judicial review provisions together

"[Overton Park] clearly separates the exception provided by § (a)(1) from the § (a)(2) exception. The former applies when Congress has expressed an intent to preclude judicial review. The latter applies in different circumstances; **even where Congress has not affirmatively precluded review, review is not to be had if the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion.** In such a case, the statute ('law') can be taken to have 'committed' the decisionmaking to the agency's judgment absolutely. This construction avoids conflict with the 'abuse of discretion' standard of review in § 706 – if no judicially manageable standards are available for judging how and when an agency should exercise its discretion, then it is impossible to evaluate agency action for 'abuse of discretion.'"

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"Committed to Agency Discretion By Law"?

Citizens to Preserve Overton Park

[T]he exception for action 'committed to agency discretion' is a very narrow exception. . . . The legislative history of the Administrative Procedure Act indicates that it is applicable in those rare instances where 'statutes are drawn in such broad terms that in a given case there is no law to apply.'

The basic exception of matters committed to agency discretion would apply even if not stated at the outset. If, for example, statutes are drawn in such broad terms that in a given case there is no law to apply, courts of course have no statutory question to review.

Figure 1: S.Rep. No. 752, 79th Cong., 1st Sess., 26 (1945)

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Webster v. Doe

the statutory language

Section 102(c) of the National Security Act of 1947, 61 Stat. 498, as amended

[T]he Director of Central Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States. . . .

Webster v. Doe

which position makes the more sense?

Majority (Rehnquist): It is possible for a matter to be "committed to agency discretion by law" with respect to statutory claims but not constitutional claims.

Dissent (Scalia): A matter cannot be "committed to agency discretion by law" for some claims, but not for other claims: it is either committed to agency discretion or it is not.

"Committed to Agency Discretion By Law"?

Lincoln v. Vigil

The allocation of funds from a lump sum appropriation is another administrative decision traditionally regarded as committed to agency discretion. After all, the very point of a lump sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way. For this reason, a fundamental principle of appropriations law is that where 'Congress merely appropriates lump sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spent do not establish any legal requirements on the agency.

Final Agency Action

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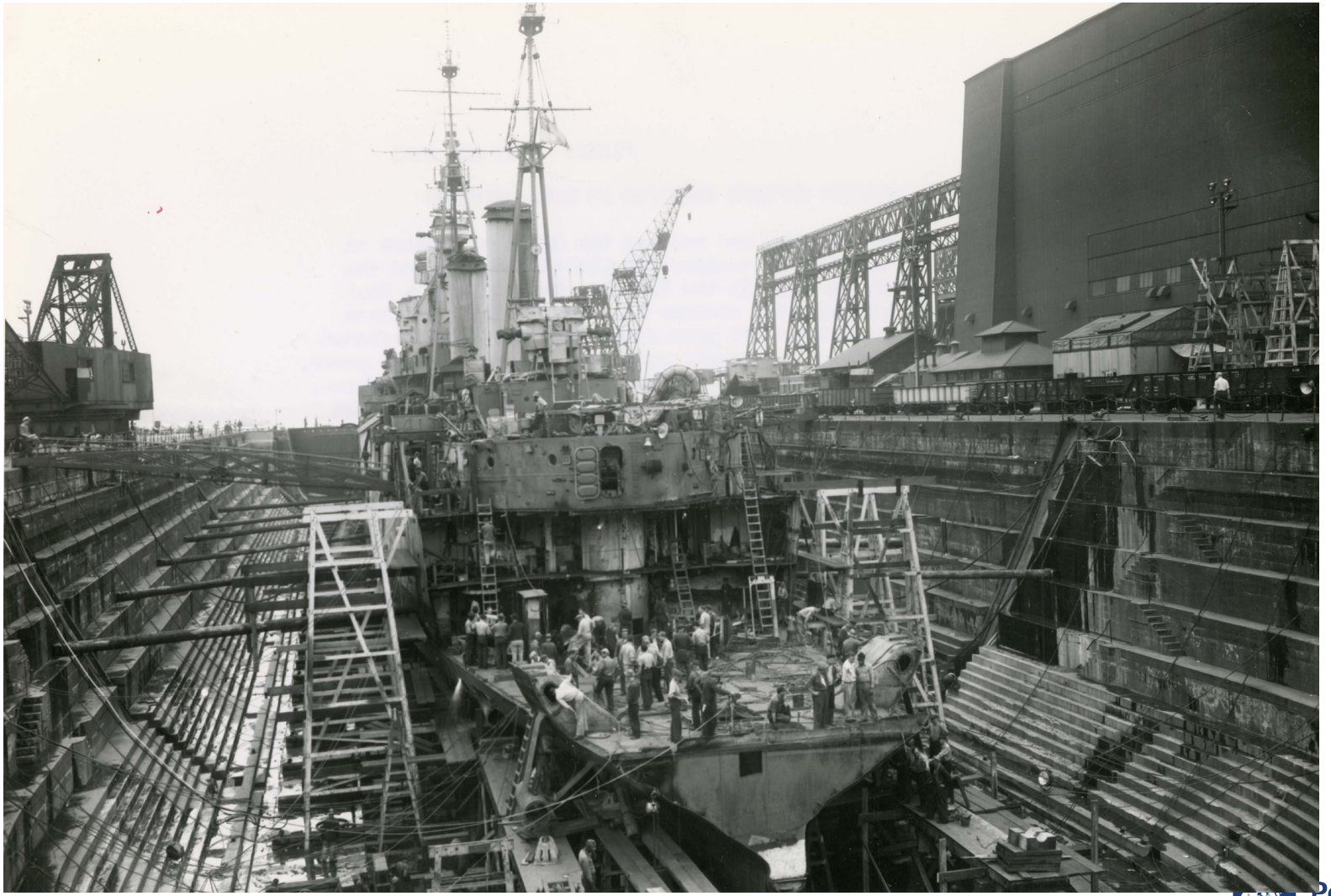
Finality requirement

Statutory basis

5 U.S.C. §704

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

Dalton v. Specter: The Philadelphia Navy Shipyard



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Dalton v. Specter: The Base Closure Process

1. Defense Secretary makes closure recommendations to Congress and Defense Base Closure and Realignment Commission
2. Commission holds hearings, prepares report containing recommendations
3. Commission submits report to President
4. Within 2 weeks, President must decide to approve or disapprove, in entirety, Commission's recommendations.
    1. If President disapproves, Commission prepares new report for President.
    2. If President approves, Defense Secretary must carry out base closures, unless Congress enacts joint resolution of disapproval.

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Norton v. SUWA: The Henry Mountains

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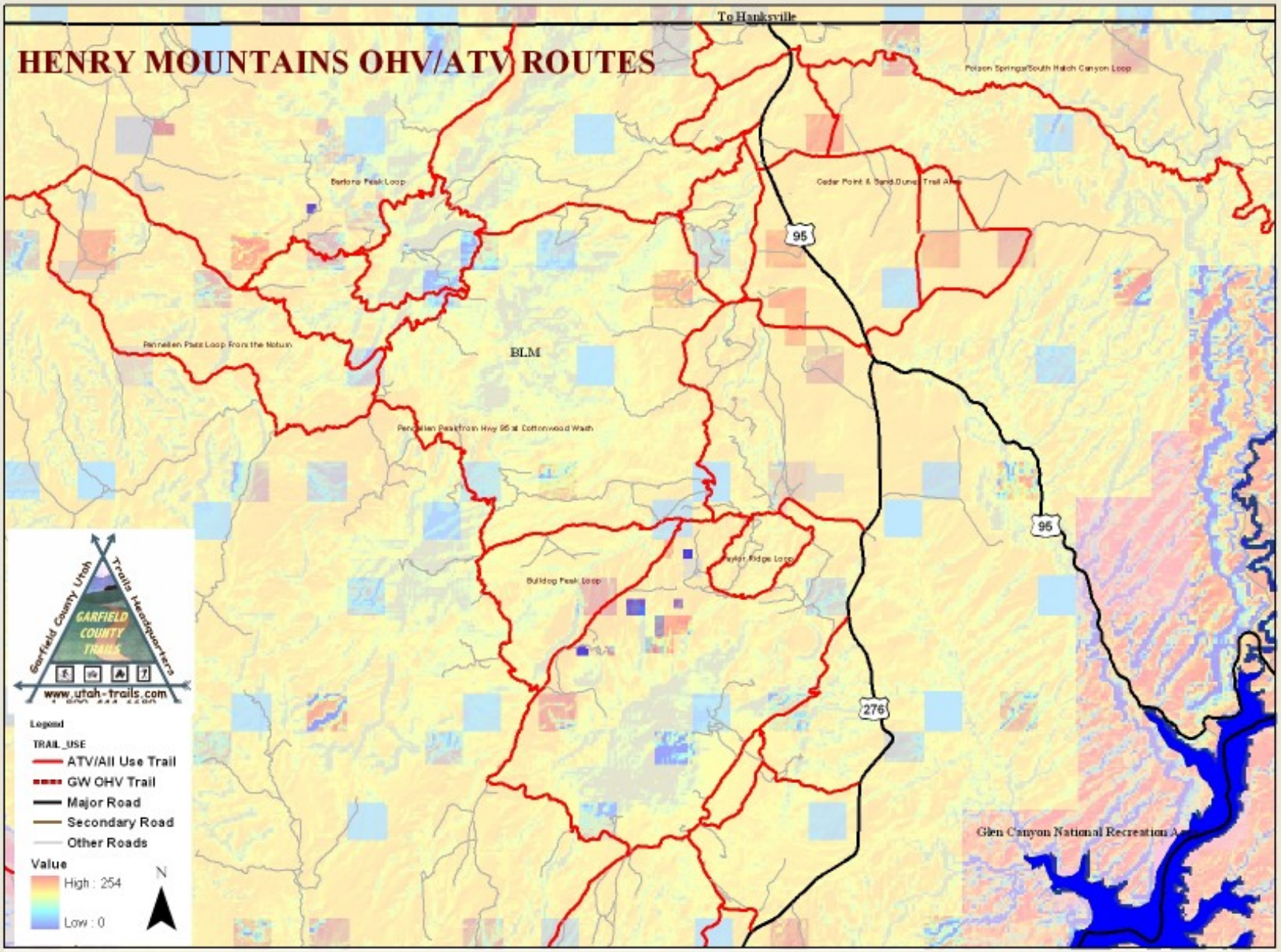
Norton v. SUWA: The Henry Mountains



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Judicial Review under the APA

§704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

Agency action and inaction

5 U.S.C. §551(13)

"agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act

Norton v. SUWA

When a failure to act is "agency action"

"[A] claim under §706(1) can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*. These limitations rule out several kinds of challenges.

- The limitation to discrete agency action precludes [a] broad programmatic attack [on the agency's conduct]. * * *
- The limitation to *required* agency action rules out judicial direction of even discrete agency action that is not demanded by law * * * . Thus, when an agency is compelled by law to act within a certain time period, but the manner of its action is left to the agency's discretion, a court can compel the agency to act, but has no power to specify what the action must be."

Norton v. SUWA

Why review is not available

agency's "action"	**discrete?**	**required?**
failed to preserve land as wilderness	no	
failed to follow plan		no

Judicial review of failures to act: what the APA says

§702 A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

§551(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act;

§706 The reviewing court shall: . . . . (1) compel agency action unlawfully withheld or unreasonably delayed;

Army Corps of Engineers v. Hawkes

- Hawkes applied to USACE for a "jurisdictional determination" (JD) that its land did not contain "waters of the United States."
  - presence of such waters would required Hawkes to acquire a permit before mining peat).
- USACE issued an "approved" (as opposed to "preliminary") JD, finding there were waters of the United States present.
- Hawkes challenged determination, and USACE resisted on finality grounds.

The test for finality

Bennett v. Spear, 520 U.S. 154 (1997)

As a general matter, two conditions must be satisfied for agency action to be 'final':

1. First, the action must mark the 'consummation' of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature.
2. And second, the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'

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Army Corps of Engineers v. Hawkes

- Supreme Court found JD to be final.
  - Under Bennett first factor, this is consummation of agency process. Aren't irrevocable, but that isn't the standard.
  - Under Bennett's second factor, this has legal effect.
    - ★ A *favorable* JD creates a five-year "safe harbor" against prosecution.
    - ★ An *unfavorable* JD, as here, has the opposite effect: it means no safe harbor.
    - ★ (Isn't this also the same effect as if there were no agency action?)
- There are no "adequate alternatives" to judicial review for those with adverse JDs: going through the permitting process just to obtain judicial review is not a practical option.

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Air Brake Systems v. Mineta

Figure 2: The MSQR-5000

Air Brake Systems v. Mineta

- Air Brake Systems (ABS) manufactures and sells pneumatic brake system for trucks and trailers.
- A would-be purchaser asks Nat'l Highway Traffic Safety Admin. (NHTSA) if ABS product complies with regulation for new trucks and trailers.
- In opinion letter, NHTSA Acting Chief Counsel says, no.
- ABS sues NHTSA and parent agency, Dep't of Transportation, alleging:
  - opinion letter is wrong on substance, and
  - NHTSA Chief Counsel lacks authority to issue opinion letters (instead of pursuing formal statutory process)
- Question: is there final agency action?

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Air Brake Systems v. Mineta

- Court (6th Circuit) says:
  - NO final agency action with respect to CONTENT of the opinion letter, but
  - Agency's statement on power to issue such letters IS final, and agency is correct.
- Key points on contents of letter:
  - Not final because tentative conclusion, based on hypothetical facts.
  - A subordinate official doesn't really speak for agency.
  - With respect to interp of "warning light," ruling is not authoritative because not eligible for much deference. (?!?!)

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  - (My question: why do we care whether or not this is agency's final word on this question?)

Ripeness and Standing

GOVPL 952: Administrative Law

Penn State Dickinson Law

November 17, 2022

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Abbott Laboratories v. Gardner (1967)

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Abbott Laboratories v. Gardner (1967)

Without undertaking to survey the intricacies of the ripeness doctrine it is fair to say that its basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties. **The problem is best seen in a two-fold aspect, requiring us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.**

Ripeness Rundown

case	**fitness?**	**hardship?**
Abbott Labs	**yes** purely legal issue	**yes** severe hardship
Toilet Goods I	**no** fact-based issue	**no** primary conduct unaffected

Statutory standing: APA text

§702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. . . .

The layers of standing doctrine

- Constitutional (Article III) Standing
  - injury-in-fact
  - traceability
  - redressability
- Non-constitutional Standing
  - plaintiff must be in the "zone of interests" protected by the statute

ADAPSO

link

Johnson v. Robinson

the statutory preclusion provision

38 U.S.C. §211(a)

On and after October 17, 1940, except as provided in sections 775, 784, and as to matters arising under chapter 37 of this title, the decisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans and their dependents or survivors shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus or otherwise.

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Bowen v. Michigan Academy of Family Physicians

the relevant statutory provisions I

Compare the Part B provision:

42 U.S.C. §1395u(b)(3)(C)

Each such contract shall provide that the carrier . . . will establish and maintain procedures pursuant to which an individual enrolled under this part will be granted an opportunity for a fair hearing by the carrier . . . .

with the Part A provision:

42 U.S.C. §1395ff(b)(3)

[A]ny individual dissatisfied with any initial determination . . . shall be entitled to reconsideration of the determination, and . . . a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title and . . . to judicial review of the Secretary's final decision after such hearing . . . .

Bowen v. Michigan Academy of Family Physicians

the relevant statutory provisions II

42 U.S.C. §405(h)

(h) Finality of Commissioner's decision
The findings and decision of the Commissioner of Social Security after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of title 28 to recover on any claim arising under this subchapter.

42 U.S.C. §1395ii makes this provision and several others applicable to Part B decisions.