

and other expenses in the same manner as the payment of final judgments as provided in this Act [probably should be “this title”, see Short Title note above] would be effective only to the extent and in such amounts as are provided in advance in appropriation Acts, was repealed by Pub. L. 99-80, § 4, Aug. 5, 1985, 99 Stat. 186.

## SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

### Statutory Notes and Related Subsidiaries

#### SHORT TITLE

The provisions of this subchapter and chapter 7 of this title were originally enacted by act June 11, 1946, ch. 324, 60 Stat. 237, popularly known as the “Administrative Procedure Act”. That Act was repealed as part of the general revision of this title by Pub. L. 89-554 and its provisions incorporated into this subchapter and chapter 7 hereof.

### § 551. Definitions

For the purpose of this subchapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; subchapter II of chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix;<sup>1</sup>

(2) “person” includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) “party” includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

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

(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;

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

(8) “license” includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) “licensing” includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) “sanction” includes the whole or a part of an agency—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) “relief” includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) “agency proceeding” means an agency process as defined by paragraphs (5), (7), and (9) of this section;

(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; and

(14) “ex parte communication” means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381; Pub. L. 94-409, § 4(b), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 103-272, § 5(a), July 5, 1994, 108 Stat. 1373; Pub. L. 111-350, § 5(a)(2), Jan. 4, 2011, 124 Stat. 3841.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(1) .....	5 U.S.C. 1001(a).	June 11, 1946, ch. 324, § 2(a), 60 Stat. 237.

<sup>1</sup> See References in Text note below.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(2)–(13) .....	5 U.S.C. 1001 (less (a)).	Aug. 8, 1946, ch. 870, §302, 60 Stat. 918. Aug. 10, 1946, ch. 951, §601, 60 Stat. 993. Mar. 31, 1947, ch. 30, §6(a), 61 Stat. 37. June 30, 1947, ch. 163, §210, 61 Stat. 201. Mar. 30, 1948, ch. 161, §301, 62 Stat. 99. June 11, 1946, ch. 324, §2 (less (a)), 60 Stat. 237.

In paragraph (1), the sentence “Nothing in this Act shall be construed to repeal delegations of authority as provided by law,” is omitted as surplusage since there is nothing in the Act which could reasonably be so construed.

In paragraph (1)(G), the words “or naval” are omitted as included in “military”.

In paragraph (1)(H), the words “functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947” are omitted as executed. Reference to the “Selective Training and Service Act of 1940” is omitted as that Act expired Mar. 31, 1947. Reference to the “Sugar Control Extension Act of 1947” is omitted as that Act expired on Mar. 31, 1948. References to the “Housing and Rent Act of 1947, as amended” and the “Veterans’ Emergency Housing Act of 1946” have been consolidated as they are related. The reference to former section 1641(b)(2) of title 50, appendix, is retained notwithstanding its repeal by §111(a)(1) of the Act of Sept. 21, 1961, Pub. L. 87–256, 75 Stat. 538, since §111(c) of the Act provides that a reference in other Acts to a provision of law repealed by §111(a) shall be considered to be a reference to the appropriate provisions of Pub. L. 87–256.

In paragraph (2), the words “of any character” are omitted as surplusage.

In paragraph (3), the words “and a person or agency admitted by an agency as a party for limited purposes” are substituted for “but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes”.

In paragraph (9), a comma is supplied between the words “limitation” and “amendment” to correct an editorial error of omission.

In paragraph (10)(C), the words “of any form” are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

**Editorial Notes**

REFERENCES IN TEXT

Sections 1884 and 1891–1902 of title 50, appendix, referred to in par. (1)(H), were a part of the various Housing and Rent Acts which were classified to section 1881 et seq. of the former Appendix to Title 50, War and National Defense, and had been repealed or omitted from the Code as executed prior to the elimination of the Appendix to Title 50. See Elimination of Title 50, Appendix note preceding section 1 of Title 50. Section 1641 of title 50, appendix, referred to in par. (1)(H), was repealed by Pub. L. 87–256, §111(a)(1), Sept. 21, 1961, 75 Stat. 538. See Historical and Revision Note above.

CODIFICATION

Section 551 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2242 of Title 7, Agriculture.

AMENDMENTS

2011—Par. (1)(H). Pub. L. 111–350 struck out “chapter 2 of title 41;” after “title 12;”.

1994—Par. (1)(H). Pub. L. 103–272 substituted “subchapter II of chapter 471 of title 49; or sections” for “or sections 1622.”.

1976—Par. (14). Pub. L. 94–409 added par. (14).

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94–409, set out as an Effective Date note under section 552b of this title.

STATUTORY ADMINISTRATIVE PAY-AS-YOU-GO

Pub. L. 118–5, div. B, title III, June 3, 2023, 137 Stat. 31, provided that:

“SEC. 261. SHORT TITLE.

“This title may be cited as the ‘Administrative Pay-As-You-Go Act of 2023’.

“SEC. 262. DEFINITIONS.

“In this title—

“(1) the term ‘administrative action’ means a ‘rule’ as defined in section 804(3) of title 5, United States Code;

“(2) the term ‘agency’ means any authority of the United States that is an ‘agency’ under section 3502(1) of title 44, United States Code, other than those considered to be independent regulatory agencies, as defined in section 3502(5) of such title;

“(3) the term ‘covered discretionary administrative action’ means a discretionary administrative action that would affect direct spending;

“(4) the term ‘direct spending’ has the meaning given that term in section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c));

“(5) the term ‘Director’ means the Director of the Office of Management and Budget;

“(6) the term ‘discretionary administrative action’—

“(A) means any administrative action that is not required by law; and

“(B) includes an administrative action required by law for which an agency has discretion in the manner in which to implement the administrative action; and

“(7) the term ‘increase direct spending’ means that the amount of direct spending would increase relative to—

“(A) the most recently submitted projection of the amount of direct spending presented in baseline estimates as defined in section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 907], as amended, under—

“(i) the budget of the President submitted under section 1105 of title 31, United States Code; or

“(ii) the supplemental summary of the budget submitted under section 1106 of title 31, United States Code;

“(B) with respect to a discretionary administrative action that is incorporated into the applicable projection described in subparagraph (A) and for which a proposal has not been submitted under section 263(a)(2)(A), a projection of the amount of direct spending if no administrative action were taken; or

“(C) with respect to a discretionary administrative action described in paragraph (6)(B), a projection of the amount of direct spending under the least costly implementation option reasonably identifiable by the agency that meets the requirements under the statute.

“SEC. 263. REQUIREMENTS FOR ADMINISTRATIVE ACTIONS THAT AFFECT DIRECT SPENDING.

“(a) DISCRETIONARY ADMINISTRATIVE ACTIONS.—

“(1) IN GENERAL.—Before an agency may finalize any covered discretionary administrative action, the

head of the agency shall submit to the Director for review written notice regarding the covered discretionary administrative action, which shall include an estimate of the budgetary effects of the covered discretionary administrative action.

“(2) INCREASING DIRECT SPENDING.—

“(A) IN GENERAL.—If the covered discretionary administrative action would increase direct spending, the written notice submitted by the head of the agency under paragraph (1) shall include a proposal to undertake 1 or more other administrative actions that would provide a reduction in direct spending greater than or equal to the increase in direct spending attributable to the covered discretionary administrative action.

“(B) REVIEW.—

“(i) IN GENERAL.—The Director shall determine whether the reduction in direct spending in a proposal in a written notice from an agency under subparagraph (A) is greater than or equal to the increase in direct spending attributable to the covered discretionary administrative action to which the written notice relates.

“(ii) NO OFFSET.—If the written notice regarding a proposed covered discretionary administrative action that would increase direct spending does not include a proposal to offset the increased direct spending as determined in clause (i), the Director shall return the written notice to the agency for resubmission in accordance with this title.

“(b) NONDISCRETIONARY ACTIONS.—If an agency determines that an administrative action that would increase direct spending is required by law and therefore is not a covered discretionary administrative action, before the agency finalizes that administrative action, the head of the agency shall—

“(1) submit to the Director a written opinion by the general counsel of the agency, or the equivalent employee of the agency, explaining that legal conclusion;

“(2) submit to the Director a projection of the amount of direct spending under the least costly implementation option reasonably identifiable by the agency that meets the requirements under the statute; and

“(3) consult with the Director regarding implementation of the administrative action.

“(c) PROJECTIONS.—Any projection for purposes of this title shall be conducted in accordance with Office of Management and Budget Circular A-11, or any successor thereto.

“SEC. 264. ISSUANCE OF ADMINISTRATIVE GUIDANCE.

“Not later than 90 days after the date of enactment of this Act [June 3, 2023], the Director shall issue instructions regarding the implementation of this title, including how covered discretionary administrative actions that increase direct spending and nontax receipts will be evaluated.

“SEC. 265. WAIVER.

“(a) IN GENERAL.—The Director may waive the requirements of section 263 if the Director concludes that the waiver—

“(1) is necessary for the delivery of essential services; or

“(2) is necessary for effective program delivery.

“(b) PUBLICATION.—Any waiver determination under subsection (a) shall be published in the Federal Register.

“SEC. 266. EXEMPTION.

“This title shall not apply to administrative actions with direct spending cost of less than—

“(1) \$1,000,000,000 over the 10-year period beginning with the current year; or

“(2) \$100,000,000 in any given year during such 10-year period.

“SEC. 267. JUDICIAL REVIEW.

“No determination, finding, action, or omission under this title shall be subject to judicial review.

“SEC. 268. SUNSET.

“This title shall expire on December 31, 2024.

“SEC. 269. GAO REPORT.

“Within 180 days of the date of enactment of this Act [June 3, 2023], the Comptroller General shall issue a report on the implementation of this title.

“SEC. 270. CONGRESSIONAL REVIEW ACT COMPLIANCE ASSESSMENT.

[Amended section 801 of this title.]”

STUDY AND REPORTS ON ADMINISTRATIVE SUBPOENAS

Pub. L. 106-544, §7, Dec. 19, 2000, 114 Stat. 2719, provided that:

“(a) STUDY ON USE OF ADMINISTRATIVE SUBPOENAS.—Not later than December 31, 2001, the Attorney General, in consultation with the Secretary of the Treasury, shall complete a study on the use of administrative subpoena power by executive branch agencies or entities and shall report the findings to the Committees on the Judiciary of the Senate and the House of Representatives. Such report shall include—

“(1) a description of the sources of administrative subpoena power and the scope of such subpoena power within executive branch agencies;

“(2) a description of applicable subpoena enforcement mechanisms;

“(3) a description of any notification provisions and any other provisions relating to safeguarding privacy interests;

“(4) a description of the standards governing the issuance of administrative subpoenas; and

“(5) recommendations from the Attorney General regarding necessary steps to ensure that administrative subpoena power is used and enforced consistently and fairly by executive branch agencies.

“(b) REPORT ON FREQUENCY OF USE OF ADMINISTRATIVE SUBPOENAS.—

“(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury shall report in January of each year to the Committees on the Judiciary of the Senate and the House of Representatives on the number of administrative subpoenas issued by them under this section and the identity of the agency or component of the Department of Justice or the Department of the Treasury issuing the subpoena and imposing the charges.

“(2) EXPIRATION.—The reporting requirement of this subsection shall terminate in 3 years after the date of the enactment of this section [Dec. 19, 2000].”

**Executive Documents**

EXECUTIVE ORDER NO. 13892

Ex. Ord. No. 13892, Oct. 9, 2019, 84 F.R. 55239, which related to civil administrative enforcement and adjudication, was revoked by Ex. Ord. No. 13992, §2, Jan. 20, 2021, 86 F.R. 7049, set out below.

EXECUTIVE ORDER NO. 13979

Ex. Ord. No. 13979, Jan. 18, 2021, 86 F.R. 6813, which required senior appointee participation in agency rulemaking, was revoked by Ex. Ord. No. 14018, §1, Feb. 24, 2021, 86 F.R. 11855.

EX. ORD. NO. 13992. REVOCATION OF CERTAIN EXECUTIVE ORDERS CONCERNING FEDERAL REGULATION

Ex. Ord. No. 13992, Jan. 20, 2021, 86 F.R. 7049, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that:

SECTION 1. *Policy.* It is the policy of my Administration to use available tools to confront the urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID-19) pandemic, economic recovery, racial justice, and climate change. To tackle these challenges effectively, executive departments and agencies (agencies) must be equipped with the flexibility to use

robust regulatory action to address national priorities. This order revokes harmful policies and directives that threaten to frustrate the Federal Government's ability to confront these problems, and empowers agencies to use appropriate regulatory tools to achieve these goals.

SEC. 2. *Revocation of Orders.* Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs) [former 5 U.S.C. 601 note], Executive Order 13777 of February 24, 2017 (Enforcing the Regulatory Reform Agenda) [former 5 U.S.C. 601 note], Executive Order 13875 of June 14, 2019 (Evaluating and Improving the Utility of Federal Advisory Committees) [former 5 U.S.C. App. note], Executive Order 13891 of October 9, 2019 (Promoting the Rule of Law Through Improved Agency Guidance Documents) [former 5 U.S.C. 601 note], Executive Order 13892 of October 9, 2019 (Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication) [formerly set out above], and Executive Order 13893 of October 10, 2019 (Increasing Government Accountability for Administrative Actions by Reinvigorating Administrative PAYGO) [former 5 U.S.C. 601 note], are hereby revoked.

SEC. 3. *Implementation.* The Director of the Office of Management and Budget and the heads of agencies shall promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing the Executive Orders identified in section 2 of this order, as appropriate and consistent with applicable law, including the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* If in any case such rescission cannot be finalized immediately, the Director and the heads of agencies shall promptly take steps to provide all available exemptions authorized by any such orders, rules, regulations, guidelines, or policies, as appropriate and consistent with applicable law. In addition, any personnel positions, committees, task forces, or other entities established pursuant to the Executive Orders identified in section 2 of this order, including the regulatory reform officer positions and regulatory reform task forces established by sections 2 and 3 of Executive Order 13777 [former 5 U.S.C. 601 note], shall be abolished, as appropriate and consistent with applicable law.

SEC. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

#### § 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled

and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection in an electronic format—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format—

(i) that have been released to any person under paragraph (3); and

(ii)(I) that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; or

(II) that have been requested 3 or more times; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or