

Table of Contents

CHAPTER 1. NATURE OF THE ADMINISTRATIVE PROCESS

B. THE ADMINISTRATIVE PROCEDURE ACT

§ 1:2 Scope and purpose

C. DELEGATION OF POWER

§ 1:3 Introduction

§ 1:4 Pre-new deal validation of delegation

§ 1:5 New deal invalidation of delegation

§ 1:6 Post-new deal validation of delegation

D. THE RULE MAKING AND ADJUDICATIVE FUNCTIONS

§ 1:7 Introduction

§ 1:8 Rule making

§ 1:9 Adjudication

E. ADMINISTRATIVE REFORM *[New]*

§ 1:10 Administrative reform

CHAPTER 2. INVESTIGATIONS

A. IN GENERAL

§ 2:1 Introduction

B. SCOPE AND LIMITATIONS

§ 2:2 Record keeping and reporting

§ 2:3 Inspections

§ 2:4 Subpoenas

§ 2:5 Parallel proceedings

CHAPTER 3. DISCLOSURE OF INFORMATION

A. THE FREEDOM OF INFORMATION ACT

1. IN GENERAL

- § 3:1 Introduction
- § 3:1.50 Agency records *[New]*

2. PUBLICATION IN FEDERAL REGISTER

- § 3:2 Scope of publication requirement
- § 3:3 Effect of failure to publish

3. AVAILABILITY FOR PUBLIC INSPECTION AND COPYING

- § 3:4 Scope of availability requirement
- § 3:4.50 The reasonableness of an agency's search for requested documents *[New]*
- § 3:5 Indexing requirement
- § 3:6 Effect of failure to index and make available

4. GENERAL DISCLOSURE

- § 3:7 Catch-all record requests

5. EXEMPTIONS

- § 3:8 Introduction
- § 3:9 National security or foreign policy matters
- § 3:10 Internal personnel rules and practices
- § 3:11 Matters specifically exempted from disclosure by statute
- § 3:11.50 Matters specifically exempted from disclosure by statute—
List of applicable statutes *[New]*
- § 3:12 Trade secrets and commercial or financial information
- § 3:13 Interagency or intra-agency memoranda or letters
- § 3:14 Personnel, medical and similar files
- § 3:15 Investigatory records compiled for law enforcement purposes
- § 3:15.50 “Reverse” FOIA claims *[New]*
- § 3:16 Regulation of financial institutions
- § 3:17.50 The executive branch and FOIA *[New]*

6. AGENCY ADMINISTRATION

- § 3:18 Fee schedules
- § 3:19 Processing requests

TABLE OF CONTENTS

§ 3:19.50 Agency responses under FOIA *[New]*

7. COURT ENFORCEMENT

§ 3:20 Civil actions

§ 3:20.50 “Virtual representation” and claim preclusion in FOIA lawsuits *[New]*

§ 3:21 Remedies

§ 3:21.50 The effect of the OPEN Government Act of 2007 on awards of attorney’s fees *[New]*

B. THE PRIVACY ACT

1. IN GENERAL

§ 3:22 Introduction

2. RECORDS COLLECTION, MAINTENANCE AND DISCLOSURE

§ 3:23 Collection of information

§ 3:24 Disclosure of information

§ 3:25 Maintenance of records

3. INDIVIDUAL ACCESS

§ 3:26 Access to records

4. ENFORCEMENT

§ 3:27 Enforcement

C. THE GOVERNMENT IN THE SUNSHINE ACT

1. IN GENERAL

§ 3:28 Introduction

2. OPEN MEETING REQUIREMENTS

§ 3:29 Scope of requirement

§ 3:30 Exceptions

3. ENFORCEMENT

§ 3:31 Enforcement

CHAPTER 4. HEARING PROCESS

A. IN GENERAL

§ 4:1 Introduction

B. RULE MAKING

- § 4:2 Rule making procedures generally
- § 4:2.10 Regulatory flexibility *[New]*
- § 4:2.20 Negotiated rule making *[New]*
- § 4:2.30 Changes to existing agency policy *[New]*
- § 4:3 Notice of rule making
- § 4:4 Exceptions to notice requirements
- § 4:5 Opportunity to participate
- § 4:6 Statement of basis and purpose
- § 4:7 Trial-type hearing
- § 4:8 Publication
- § 4:9 Right to petition

C. ADJUDICATION

- § 4:10 Adjudication procedure generally
- § 4:10.10 Alternate dispute resolution *[New]*
- § 4:11 Notice of hearing
- § 4:12 Opportunity for participation and hearing
- § 4:13 License applications

D. DUE PROCESS CONSIDERATIONS

§ 4:14 Right to hearing

E. ADMINISTRATIVE LAW JUDGES

- § 4:15 Qualification and powers
- § 4:16 Disqualification
- § 4:16.10 Pleading requirements *[New]*
- § 4:16.50 ALJ duty of explanation *[New]*

F. EVIDENTIARY CONSIDERATION

- § 4:17 Burdens and admissibility
- § 4:18 Examination, cross-examination and rebuttal

CHAPTER 5. DECISIONAL PROCESS

A. IN GENERAL

§ 5:1 Introduction

TABLE OF CONTENTS

B. PARTICULAR CONSIDERATIONS

- § 5:2 Recommended, initial or tentative decisions
- § 5:3 Separation of functions
- § 5:4 Proposed findings and exceptions
- § 5:5 Agency review
- § 5:6 Ex parte communications
- § 5:7 Findings and reasons (formal actions)
- § 5:8 Statement of reasons (informal actions)
- § 5:9 Sanctions and remedies

CHAPTER 6. JUDICIAL REVIEW

I. RIGHT TO REVIEW

A. IN GENERAL

- § 6:1 Introduction

B. METHODS OF REVIEW

- § 6:2 General principles

C. AVAILABILITY OF REVIEW

- § 6:3 Presumption of reviewability
- § 6:4 Statutory preclusion of review
- § 6:5 Action committed to agency discretion

D. STANDING FOR REVIEW

- § 6:6 Standing

E. TIMING OF REVIEW

- § 6:7 In general
- § 6:8 Exhaustion of administrative remedies
- § 6:9 Ripeness and finality
- § 6:10 Primary jurisdiction

II. SCOPE OF REVIEW

A. IN GENERAL

- § 6:11 Introduction

B. QUESTIONS OF FACT, LAW AND JUDGMENT

- § 6:12 Questions of fact—The substantial evidence test
- § 6:13 Questions of law and mixed questions of law and fact *[New]*
- § 6:14 Questions of judgment or discretion

C. EQUAL ACCESS TO JUSTICE ACT *[New]*

- § 6:15 General overview
- § 6:16 Cases

APPENDIX

- App. A.1. Administrative Procedure Act (5 USCA §§ 551 et seq.)
- App. A.3. Equal Access to Justice Act (5 U.S.C.A. § 504) *[New]*
- App. A.4. Executive Order 12291 (46 Fed. Reg. 13193)
[Revoked] *[New]*
- App. A.5. Regulatory Flexibility Act (5 USCA § 601) *[New]*
- App. A.6. Executive Order 12498 [Revoked] *[New]*
- App. A.7. Executive Order 12606 [Revoked] *[New]*
- App. A.8. Executive Order 12612 [Revoked] *[New]*
- App. A.9. Executive Order 12630 *[New]*
- App. A.10. Executive Order 12866 *[New]*
- App. A.11. Executive Order 13083 [Revoked] *[New]*
- App. A.12. Executive Order 13095 [Revoked] *[New]*
- App. A.13. Executive Order 13132 *[New]*
- App. A.14. Executive Order 13272 *[New]*
- App. A.14.5. Executive Order 13392 *[New]*
- App. A.15. The Openness Promotes Effectiveness in our National Government Act of 2007 a.k.a. The Freedom of Information Act (FOIA) as amended, 2007 *[New]*
- App. A.16. Memorandum of President Barack Obama regarding Freedom of Information Act (FOIA), January 21, 2009 *[New]*
- App. A.17. Memorandum of President Barack Obama Regarding Transparency and Open Government, January 21, 2009 *[New]*
- App. A.18. Memorandum of Attorney General Eric Holder Regarding New Guidelines for the Freedom of Information Act (FOIA), March 19, 2009 *[New]*

TABLE OF CONTENTS

- App. A.19. The Protected National Security Documents Act of 2009 *[New]*
- App. A.19.5. Exec. Order 13526 of December 29, 2009 *[New]*
- App. A.20. Executive Order 13563 of January 18, 2011 *[New]*
- App. A.20.5. Executive Order 13579 of July 11, 2011 *[New]*
- App. A.21. Code of Federal Regulations: Procedures for Disclosure of Records Under FOIA *[New]*
- App. A.22. Code of Federal Regulations: Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974 *[New]*
- App. A.23. New Freedom of Information Act (FOIA) Text as of August 2, 2016 *[New]*
- App. A.24. Regulatory Flexibility Act (5 U.S.C. §§ 601 et seq.) *[New]*
- App. A.25. Housing and Urban Development (HUD) Rules on Availability of Information to the Public (in Accordance with FOIA) (as of April 1, 2017) *[New]*
- App. A.26. Executive Order Excepting Administrative Law Judges from the Competitive Service dated July 10, 2018 *[New]*
- App. A.27. Executive Order Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication dated October 9, 2019 *[New]*
- App. A.28. Executive Order Promoting the Rule of Law Through Improved Agency Guidance Documents Dated October 9, 2019 *[New]*
- App. A.29. Executive Order Revocation of Certain Executive Orders Concerning Federal Regulations dated January 20, 2021 *[New]*
- App. A.30. Executive Order Revocation of Certain Presidential Actions dated February 24, 2021 *[New]*
- App. A.31. Department of Justice Office of Information Policy Guidance for Agency FOIA Administration in Light of Covid-19 Impacts *[New]*
- App. A.32. Attorney General's Freedom of Information Act Guidelines, dated March 15, 2022
- App. A.33. Executive Order on Modernizing Regulatory Review [Revoked] *[New]*
- App. A.34. Executive Order on Amending Regulations Relating to the

ADMINISTRATIVE LAW PRACTICE AND PROCEDURE

Safeguarding of Vessels, Harbors, Ports, and Waterfront
Facilities of the United States *[New]*

- App. A.35. Exec. Order 14148, January 20, 2025, 90 F.R. 8237, Initial Rescissions of Harmful Executive Orders and Actions *[New]*
- App. A.36. Exec. Order 14158, January 20, 2025, 90 F.R. 8441, Establishing and Implementing the President's "Department of Government Efficiency" *[New]*
- App. A.37. Exec. Order 14192, January 31, 2025, 90 F.R. 9065, Unleashing Prosperity Through Deregulation
- App. A.38. Exec. Order 14215, February 18, 2025, 90 F.R. 10447, Ensuring Accountability for All Agencies
- App. A.39. Exec. Order 14219, February 19, 2025, 90 F.R. 10583, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative
- App. A.40. Exec. Order 14224, March 1, 2025, Designating English as the Official Language of the United States, 90 F.R. 11363 *[New]*
- App. A.41. Executive Order 14243, March 20, 2025, Stopping Waste, Fraud, and Abuse by Eliminating Information Silos, 90 FR 13681 *[New]*
- App. A.42. Executive Order 14274, April 15, 2025, Restoring Common Sense to Federal Office Space Management, 90 F.R. 16445 *[New]*
- App. A.43. Executive Order 14275, April 15, 2025, Restoring Common Sense to Federal Procurement, 90 F.R. 16447 *[New]*
- App. A.44. Exec. Order 14294, May 9, 2025, Fighting Overcriminalization in Federal Regulations, 90 F.R. 20363 *[New]*