The Administrative Procedure Act (Title 5, Part I, Chapters 5 and 7 of the United States Code)

First passed in 1946, and amended several times since, the Administrative Procedure Act (APA) is the basic law that all federal agencies must obey in their work. It applies to agencies that are part of the Executive Branch and report directly to the President (such as the Department of Transportation) and to independent agencies that report to commissioners who are nominated by the President and confirmed by the Senate (such as the Federal Communications Commission).
The APA was a compromise law.
Under President Franklin Delano Roosevelt, the federal government took on an expanded role during the Great Depression, with government agencies directly regulating many types of businesses and trying to jump-start economic recovery.
Supporters of these programs, called the “New Deal,” said that government by experts working for such agencies was efficient and necessary.
Opponents thought that these agencies, if they could not be held accountable to the public, would pave the way for central planning and government dictatorships, as had happened in Germany under the Nazis and Russia under the Communists.
The APA balanced these two concerns, first, by requiring agencies to accept public comments on proposed rules, and second, by allowing people affected by the rules to challenge them in court.
Senator Pat McCarran of Nevada, the lead sponsor of the APA, called the APA “a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the federal government.
It is designed to provide guaranties of due process in administrative procedure.”
[1]

Listed here are the most important sections of the APA:

· § 551. Definitions

The APA applies to most, but not all, government organizations. The APA does not apply to Congress or the federal courts, state or territorial governments, the government of the District of Columbia, or military forces deployed during war or acting in occupied territory.

However, the APA does apply to every action that an agency can take—making, amending, or repealing a rule; granting, denying, suspending, or withdrawing a license or permit; imposing fines or penalties; or taking property.

· § 553. Rulemaking

This section applies to all agency rules, except those involving the military, foreign affairs, or agency management and personnel. To make, amend, or repeal a rule, the agency must first file a notice of proposed rulemaking (NPRM) in the Federal Register.
The NPRM must contain the legal authority under which the agency is making the rule and either the language of the proposed rule or a description of the rule's subject matter and the issues the rule is trying to address.
(An agency does not have to file an NPRM for its own "interpretive" rules or statements of policy, but as we will see below, that does not mean the rule cannot be challenged.)
Then the agency must allow public comments on a rule; the specific deadline for submitting comments will be in the NPRM in the Federal Register.
After considering the public comments, if the agency wants to go ahead with its proposed changes it must write a statement of the rule's legal basis and purpose, finalize the language of the proposed rule, and publish it in the Federal Register.
The rule goes into effect thirty days after its final publication in the Federal Register—except for rules creating exemptions to or lifting restrictions created by other rules—or less, if the agency finds that the rule needs to go into effect sooner.

· § 701. Judicial Review: Application, Definitions

When citizens seek to challenge a rule in court, the APA sets out procedures they can use to have the rule reviewed by a federal court. Judicial review, however, does not apply if the statute under which the agency has made the rule does not allow for judicial review (this is rare), or where the statute commits decisions on a certain subject to the discretion of an agency (this is much more common).

· § 702. Right of Review

Any person who is “adversely affected” by rules or other agency action is entitled to judicial review of the agency’s rule or action. So long as someone can express how an agency action is affecting them—costing them money, having their property taken or made less valuable, making them unable to exercise Constitutional rights—a court can review, and potentially block, the agency’s action.

· § 704. Actions Reviewable

Not every action is subject to judicial review. Only *final* agency actions can be reviewed by a court. Agency actions are final when a person has tried every other way to have a rule reconsidered through an agency’s own internal appeals process or other appeals processes created by the law the agency works under. But once the agency says the rule is final, a court can review it.

· § 705. Relief Pending Review

When a rule or other action is challenged in court, the agency can postpone its action while the action is reviewed. The court itself can also order the agency to postpone its action if going through with the action would “irreparably” harm a person challenging the rule (for example, a rule that would allow pollutants to flow into someone’s property would be an “irreparable” harm).

· § 706. Scope of Review

In reviewing an agency's rule or action, a court can compel an agency to act if its action is "unlawfully withheld or unreasonably delayed." The court can also stop agency actions if it finds the actions are an abuse of the agency's legal power, not allowed by federal law, contrary to a person's Constitutional rights, have been done without observing procedures required by the APA or other federal laws, cannot be supported by the available scientific or technical evidence, or the action is not warranted by the facts of the situation.

The Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a)

Signed into law in 1966, the Freedom of Information Act (FOIA) provides for public access to most federal agencies records, with some well-defined exceptions. Under the current version of FOIA, the government does not have to provide access to the following records:

1) Classified information relating to national security, foreign policy, or foreign and domestic intelligence;

2) Internal agency communications never intended to reflect agency policies;

3) Any information that is withheld from the public by law;

4) Commercial information and trade secrets;

5) Documents considered privileged by law, such as conversations between government attorneys and agency members seeking legal advice or the work product of government attorneys;

6) Personnel, medical, or other private information about a specific person;

7) Information collected by law enforcement agencies, including records that if released would interfere with ongoing investigations, would deprive a suspect of a fair trial, would reveal personal information or the identities of confidential sources, would disclose investigative techniques and allow criminals to work around them, or endanger the lives or safety of officers;

8) Some types of financial information collected by banks and financial institutions that are reported to the government;

9) Information about oil wells.

Once a person makes a FOIA request asking for documents on a specific subject, the government agency has ten working days (excluding weekends and government holidays) to respond. Though most agencies take longer to find records due to large backlogs of FOIA requests, agencies are generally expected to keep the requestor informed about how the search is going. Agencies may charge “reasonable” fees to recover the costs of records searches, redacting of any exempt information in a document, and photocopying. Under certain circumstances, if agencies withhold requested documents, they are required to send the requestor a list of the withheld documents, along with the legal basis of why the documents were withheld.

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Agencies provide ways to appeal the withholding of documents under FOIA, and withholdings can also be challenged in federal court.

FOIA was modified in 1974 with the addition of the Privacy Act. The Privacy Act allows any person the right to see any records the government has collected about them,
[3]
the right to amend those records if they are inaccurate or incomplete, and the right to sue the government for releasing their private information unless it was authorized to do so by law.

The E-Government Act (Pub. L. 107-347 (2002))

Enacted in 2002, The E-Government Act requires government agencies use Internet services to improve public access to government information. Section 206 of the Act applies specifically to government agencies; it requires them to maintain publicly-accessible websites listing rules that are open for public comment and publishing comments received.
Rules and comments from all federal agencies are available at Regulations.gov (www.regulations.gov).

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[1] Quoted in Donald D. Berry & Howard R. Whitcomb, The Legal Foundations of Public Administration 32 (3d ed. 2005).

[2] This is commonly called a *Vaughn* Index, after the case which required agencies to produce them, *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

[3] There are certain types of records the government is not required to release under the Privacy Act. Records maintained by the CIA or by law enforcement agencies for law enforcement purposes, records used solely for statistical purposes or for determining eligibility for a federal job or military service, or records relating to tests or examinations for hiring or promotion within the government that would compromise the fairness of these tests are all exempt from release. 5 U.S.C. § 552a(j)-(k) (2006).